

**Investigative Report
04-01
STATE OF IOWA**



CITIZENS' AIDE/OMBUDSMAN
**INVESTIGATION INTO THE
DEPARTMENT OF NATURAL RESOURCES'
INVESTIGATION OF ASIAN MARKETS
IN POLK COUNTY**

**TO: Director Jeffrey Vonk
Iowa Department of Natural Resources**

RE: Case File 02-3763

**Issued: June 15, 2004
Released: August 27, 2004**

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
EXECUTIVE SUMMARY	iii
Role of the Ombudsman	iii
The DNR’s Investigation of Unlawful Commercialization of Fish.....	iii
Issues.....	iii
Findings.....	iv
Conclusions.....	v
Recommendations.....	vii
OVERVIEW	1
Background.....	1
Ombudsman Investigation	1
Investigative Process.....	2
Interviews.....	2
Documents	2
Challenges and Constraints.....	3
Investigative Report.....	3
Focus of the Report.....	3
Sections of the Report.....	4
Confidential Information in the Report.....	4
DEPARTMENT OF NATURAL RESOURCES	5
DNR Structure	5
Laws Regulating Fishing	6
Covert Operations	7
Case Activity Reports	8
SYNOPSIS OF THE DNR’S COVERT INVESTIGATION.....	9
ANALYSIS AND CONCLUSIONS	12
Issue 1: Whether DNR treated the Asian markets differently from other Polk County area markets?	12
Conclusion:	12
Issue 2: Whether the DNR did not make any attempt before the filing of criminal charges to educate, notify, or warn the Asian markets that their actions violated Iowa law?	14
Conclusion:	14

Issue 3: Whether DNR prolonged the investigation unnecessarily, allowing continuing or repeat violation which factored into an excessive number of criminal charges?.....	19
Issue 3 (a): Whether the DNR prolonged the investigation unnecessarily?	19
Conclusion:	19
Issue 3 (b): Whether the duration of the investigation adversely affected the number of criminal charges or the amount of fines and penalties?.....	21
Conclusion:	21
Issue 3 (c): Whether the DNR’s role in the charging decision had any affect on the number of criminal charges?.....	23
Conclusion:	23
Issue 4: Whether the DNR complied with the documenting provisions as set forth in the DNR’s <i>Standard Operating Procedures for Investigative Reports</i> ?.....	24
Conclusion:	24
Issue 5: Whether the DNR’s cultural awareness training is adequate?.....	28
Conclusion:	28
Issue 6: Whether the DNR’s education efforts sufficiently identify and explain the provisions of the law regarding unlawful commercialization of wildlife?	28
Conclusion:	29
RECOMMENDATIONS	32
APPENDIX A –Notice of Investigation	33
APPENDIX B - Chronology.....	37
APPENDIX C – Cultural Awareness Curriculum	42
APPENDIX D – Response to Report by Lowell Joslin	63

EXECUTIVE SUMMARY

Role of the Ombudsman

The Office of Citizens' Aide/Ombudsman (Ombudsman) is an independent and impartial investigative agency located in the legislative branch of Iowa state government. Its powers and duties are defined in Iowa Code chapter 2C.

The Ombudsman investigates complaints against most Iowa state and local governmental agencies. The Ombudsman can investigate to determine whether agency action is unlawful, contrary to policy, unreasonable, unfair, oppressive, or otherwise objectionable. After an investigation, the Ombudsman may issue an investigative report, stating its findings and conclusions, as well as any recommendations for improving agency law, policy or practice.

The DNR's Investigation of Unlawful Commercialization of Fish

At the request of State Representative Ed Fallon, the Ombudsman investigated the actions of the Iowa Department of Natural Resources (DNR) in regard to the DNR's investigation of three Asian markets in Des Moines Iowa. DNR's investigation led to the criminal prosecution of the store owners and fisherman for unlawful commercialization of wildlife. The Ombudsman was also contacted by other concerned individuals.

The Ombudsman issued notice of investigation to the DNR on April 1, 2003. The Ombudsman researched Iowa law and the DNR's rules and policies; interviewed numerous witnesses, including staff from the DNR and the store owners; visited the stores and examined the DNR's investigative file and related documentation.

Issues

From the complaint information, the Ombudsman identified the following issues regarding actions the DNR took in the investigation, surveillance and subsequent criminal prosecution of the Asian markets.

1. Whether the DNR treated the Asian markets differently from other Polk County area markets?
2. Whether the DNR did not make any attempts before the filing of criminal charges to educate, notify, or warn the Asian markets that their actions violated Iowa law?

3. Whether the DNR prolonged the investigation unnecessarily, allowing continuing or repeat violations which factored into an excessive number of criminal charges filed?

During the course of the investigation, the Ombudsman also identified the following issues:

4. Whether the DNR complied with documenting provisions as set forth in the DNR's *Standard Operating Procedures for Investigative Reports*?
5. Whether the DNR's cultural awareness training is adequate?
6. Whether the DNR's education efforts sufficiently identify and explain the provisions of the law regarding unlawful commercialization of wildlife?

Findings

The DNR initiated a covert investigation in August of 2002 after receiving information from a confidential informant indicating a specific Asian market, Ting's, was selling fish that had been caught by local fishermen. The purchase and sale of game fish taken from the waters of the State is a violation of Iowa law (Iowa Code section 481A.136 – Unlawful Commercialization of Wildlife).

The DNR's investigation lasted almost three months. The covert team members conducted surveillance of Ting's and visited a total of eight ethnic and seven non-ethnic markets in Polk County. A covert team member also visited three ethnic markets in eastern Iowa.

Three markets were identified as selling game fish: Ting's, Jung's and Des Moines Asian.¹ Various covert team members visited Ting's on 29 occasions between August 10 and October 20 and either observed game fish for sale or purchased some of the game fish; on one visit, they bought all of the game fish available. Covert team members visited Des Moines Asian a total of eight times between September 6 and October 20 and purchased game fish on three occasions. They also went to Jung's on seven occasions between September 18 and October 20 and purchased game fish twice.

The surveillance identified seven individuals (fishermen) delivering game fish to Ting's.

The DNR decided to end the investigation in mid-October. A DNR officer presented the evidence gathered in the investigation to an Assistant Polk County Attorney. A search warrant was executed at Ting's on October 21, 2002, during which 137 game fish were

¹ Ting's and Des Moines Asian changed ownership after the DNR's investigation and prior to the issuance of the Ombudsman's report.

seized. Consent searches were conducted the same day at the other two markets; 12 game fish were seized at Jung's.

Following discussions with the attorney for the owners of Ting's, the Polk County Attorney's Office filed a trial information charging each of the two owners with 20 counts of unlawful commercialization of wildlife. The owners pled guilty to all counts and each received a one-year suspended sentence; they were fined \$500 on each count (\$20,000 total fines for both) and ordered to pay restitution of \$1692.25, plus a civil penalty of \$15.00 for each of the 348 fish bought or seized by the DNR (\$5220.00 total), in addition to surcharges and court costs.

The owner of Jung's was charged with eight counts of unlawful commercialization of wildlife, and the owner of Des Moines Asian was charged with four counts. The owner of Jung's pled guilty to two counts and received a deferred judgment; he was ordered to pay a charitable contribution of \$500.00 in lieu of community service. The owner of Des Moines Asian also pled guilty to lesser charges and ordered to make a \$1000.00 charitable contribution. The seven fishermen were charged with a total of 85 counts of unlawful commercialization of wildlife.

Conclusions

The Ombudsman concluded the DNR did not single out or treat the Asian markets differently from other Polk County markets. The evidence indicates that the DNR's investigation focused primarily on Ting's. However, the DNR also visited other ethnic and non-ethnic stores in Polk County and eastern Iowa to determine if they were in compliance with Iowa law.

The Ombudsman did not conclude that the DNR acted unreasonably in referring the violations to the county attorney for prosecution, instead of just warning or notifying the markets that they were violating Iowa law. In making this determination, the Ombudsman considered whether there were reasonable bases for the DNR's decision, in view of existing laws and information available to the DNR at the time. In this case, the DNR believed:

- The unlawful commercialization of wildlife is a serious offense.
- Although the original complaint was about Ting's, it became clear to the DNR the scope of the problem was more widespread and extended to at least two other Asian markets and seven fishermen.
- The actions and behavior of the fishermen and market employees indicated they knew what they were doing was wrong.
- The extent of the violations was significant, at least with Ting's.

In addition, while the DNR recognized they were dealing with individuals originally from different cultures and considered possible cultural differences, they also believed the

store owners had become assimilated into the Iowa culture, given the time they have lived in Iowa. The owners of Ting's had operated their store since 1987.

It is also relevant to note the DNR does not have the option to assess administrative penalties and could only pursue criminal prosecution once it knew the seriousness and extent of the violations.

The Ombudsman concluded the DNR did not unnecessarily prolong the investigation. Similar investigations in other states usually took a much longer period of time. During the DNR's three month investigation, DNR staff attempted to identify the fishermen and markets involved, as well as determine whether deer, squirrel or other game were being sold; they also had to attend to their regular duties as conservation officers.

It is also the Ombudsman's opinion that ending the investigation sooner would not have guaranteed fewer criminal charges or substantially smaller penalties for the Asian markets. The Ombudsman found that the number of game fish available for sale in the stores varied from day to day. In addition, even when they observed game fish, covert team members did not purchase all of the available game fish, except for one occasion. For this reason, it is almost impossible to determine if ending the investigation would have resulted in fewer criminal charges.

While the DNR may have had some input in the charging decision, the final decision to charge the Asian markets for unlawful commercialization rested with the Polk County Attorney.

In summary, the DNR's decision to initiate a covert operation, the scope of the covert operation, and the DNR's role in the charging and prosecution were fair and reasonable, based on the information available to the DNR at the time.

The Ombudsman did, however, identify several areas needing improvement. Although the following deficiencies did not directly affect the outcome of the DNR's investigation, the Ombudsman believes correcting and improving these deficiencies will strengthen the DNR's documentation, training and education efforts.

- DNR staff did not always adhere to the documenting provisions as set forth in the DNR's *Standard Operating Procedures for Investigative Reports* (manual).
- Some of the DNR's veteran covert team members and conservation officers have not received cultural awareness training for many years.
- The documents that are part of the DNR's cultural awareness training for new officers are over ten years old.
- The revised language on the DNR's web site and in the DNR's publications do not identify the consequences of unlawful commercialization.

Recommendations

The Ombudsman recommends the DNR:

1. Explore seeking statutory authority creating administrative penalties for unlawful commercialization of wildlife, in lieu of or independent of criminal charges that may be filed for such violations. Factors to consider in the assessment of an administrative penalty may include the gravity of the violation and the degree of culpability of the violator (see section 455B.109(1) regarding administrative penalties related to environmental protection).
2. Expand the list of mandatory Case Activity Reports (CAR) in the DNR's *Standard Operating Procedures for Investigative Reports* (manual) to include serious violations such as unlawful commercialization of wildlife.
3. Require that covert team members submit copies of all CAR's and other documentation prepared as the result of a covert investigation to the Bureau Chief.
4. Identify and clarify how the manual, and provisions within the manual, apply to covert investigations.
5. Review conservation officer's compliance with the standards set force in the manual and conduct training to correct deficiencies in identified areas.
6. Develop an action plan for updating the DNR's cultural awareness curriculum and timely provide updated training to all conservation officers.
7. Revise the language in the DNR's publications and on the DNR's web site to emphasize the seriousness and potential consequences for unlawful commercialization of fish.
8. Continue to expand its outreach efforts to educate groups, including the Asian community, and entities, including markets and other commercial establishments, of the DNR regulations regarding the unlawful purchase and sale of fish and other wildlife.

OVERVIEW

Background

In August of 2002, the DNR received information from a fisherman indicating Ting's Asian Market was selling locally caught game fish in violation of Iowa law. The DNR initiated a three month investigation that resulted in criminal charges for unlawful commercialization of wildlife against the owners of three Asian markets: Ting's Asian Market (Ting's), Jung's Oriental Food Store (Jung's) and Des Moines Asian Food Store (Des Moines Asian).² Collectively, these markets will be referred to as the "Asian markets" in the Ombudsman's report.

The owners of the Asian markets were charged with multiple counts of violating section 481A.136 of the Iowa Code, unlawful commercialization of wildlife.

In addition, a total of 85 charges for unlawful commercialization were filed against seven other individuals for selling game fish to Ting's.

A press release issued by the DNR on December 3, 2002 announced the charges and fines. Representative Ed Fallon, members of the Des Moines Asian community and a Des Moines Register columnist questioned whether the DNR should have taken into consideration cultural differences and warned the markets, rather than pursue criminal prosecution of a seldom-used statute resulting in serious charges with significant monetary fines and penalties for the markets. There was also criticism and comparisons as to the amount of penalties and fines assessed against the markets as compared to those levied as the result of fish kills due to environmental or manure spills.

Ombudsman Investigation

Citizens' Aide/Ombudsman William P. Angrick II (Ombudsman) initiated an investigation after receiving a request on December 17, 2002 from Representative Ed Fallon to review the DNR's actions. The Ombudsman received similar complaints from individuals in the Des Moines Asian community.

The Ombudsman issued notice of the investigation to the DNR's director, Jeffrey Vonk, on April 1, 2003.³ The notice stated that the allegations included, but were not limited to, the following:

- DNR treated the Asian markets differently from other Polk County area markets.

² Ting's and Des Moines Asian changed ownership after the DNR's investigation and prior to the issuance of the Ombudsman's report.

³ Appendix A, Letter (containing notice of investigation) to the DNR Director, Jeffrey Vonk.

- DNR did not make any attempts before the filing of criminal charges to educate, notify, or warn the Asian markets that their actions violated Iowa law.
- DNR prolonged the investigation unnecessarily, allowing continuing or repeat violations which factored into the excessive number of criminal charges filed.

Included with the notice was a subpoena for documents and records relevant to the investigation.

The Ombudsman assigned the case to the Assistant Citizens' Aide/Ombudsman for Small Business, Kristie Hirschman. For reference purposes in this report, actions taken in the investigation by Ms. Hirschman will be ascribed to the Ombudsman.

Investigative Process

Interviews

The Ombudsman generated over 1100 pages of testimony through sworn interviews with 10 witnesses, including the owners of the Asian markets. A listing of the DNR officers named in the report⁴ is as follows:

- ✓ Jeffrey Vonk – Director
- ✓ Lowell Joslin – Chief of the Law Enforcement Bureau within the Conservation and Recreation Division.
- ✓ Lon Lindenberg – District 6 Supervisor within the Law Enforcement Bureau.
- ✓ Craig Lonneman – Conservation officer assigned to Polk County.

The Ombudsman asked follow-up questions after receiving additional information from other witnesses or documents.

Documents

The Ombudsman reviewed numerous documents relating to the DNR's investigation of the Asian markets, including:

- Relevant Iowa laws, DNR administrative rules and policies.
- DNR's investigative file.
- DNR Fish and Game Officer's Activity Reports.

⁴ DNR covert team members are not identified by name in this report. See page 4 of this report for an explanation.

- DNR’s training curriculum on cultural awareness.
- Surveillance tapes.
- Court documents.
- DNR publications.

Challenges and Constraints

The Ombudsman requested information from the Polk County Attorney regarding communications between the DNR staff and his office. County Attorney John Sarcone declined to answer the Ombudsman’s questions, citing prosecutorial discretion. The Ombudsman disagrees that the information sought by the questions were not subject to the Ombudsman’s review. The Ombudsman was, however, able to confirm at least a portion of the information regarding the DNR’s role in the charging and prosecution of Ting’s through an interview with Ting’s attorney.

During the course of the investigation, the Ombudsman also identified documents and evidence that the DNR did not provide in response to the Ombudsman’s subpoena. The Ombudsman did not interpret the DNR’s oversight as an intentional disregard of the lawful requirements of a subpoena, but rather as a deficiency in document management – an issue the Ombudsman discusses later in this report. It should be noted that the DNR promptly provided the additional documents and information once the items were identified.

Investigative Report

Focus of the Report

The Ombudsman is charged with the responsibility to investigate administrative actions that may be contrary to law, rule, or policy, or that may be unreasonable, unfair, or inconsistent, even though they were in accordance with law, rule, or policy. The Ombudsman may also be “concerned with strengthening procedures and practices which lessen the risk that objectionable administrative actions will occur.”⁵

The Ombudsman focused on whether the DNR’s actions were fair and reasonable based on the information available to the DNR at the time. This review included the DNR’s decision to initiate a covert operation, the scope of the covert operation, the DNR’s role in the charging and prosecution, and whether the Asian markets were adversely affected by these actions and decisions as it related to the allegations investigated by the Ombudsman.

Ting’s was the primary focus of the DNR’s covert operation and therefore, much of the Ombudsman’s report pertains to Ting’s. The DNR’s actions as they relate to Jung’s and

⁵ Iowa Code section 2C.11(5).

Des Moines Asian are addressed in lesser detail. The Ombudsman did not investigate in depth or reach any conclusion about how the DNR's actions affected the fishermen who were criminally charged.

Sections of the Report

The Ombudsman's investigative report is divided into seven sections:

- Overview
- Department of Natural Resources
- Synopsis
- Analysis and Conclusions
- Recommendations
- Appendix

The "Overview" section provides an overview of the investigation, what information was collected and analyzed and what issues were addressed and resolved. "Department of Natural Resources" describes DNR's structure, laws and regulations pertaining to fish, DNR covert operations and case activity reports. The "Synopsis" outlines DNR's investigation of the Asian markets. "Analysis and Conclusions" applies relevant law and policy to the collected facts and states the Ombudsman's conclusions on the issues investigated. "Recommendations" offers proposed changes which the Ombudsman believes will strengthen the DNR's documentation, training and education efforts. "Appendix" is a collection of other information referenced in the report.

Confidential Information in the Report

Iowa Code section 2C.9 allows the Ombudsman to have access to information relevant to an investigation. The Ombudsman, however, is subject to laws pertaining to the disclosure of confidential or privileged information obtained in the investigation.

The DNR specifically requested that the Ombudsman not identify their covert team members by name in the report. The Ombudsman agrees that revealing the names of the covert team members could have an adverse effect on DNR's ability to conduct future investigations. The Ombudsman also determined that keeping the names of the covert team members confidential would not have an impact on the Ombudsman's report. For these reasons, the Ombudsman will not identify individual covert team members in this report.

In addition to the three Asian markets that were criminally prosecuted, the DNR visited other markets during the course of its investigation, including other Asian markets, non-Asian ethnic markets and major supermarkets. The Ombudsman has chosen not to identify these other markets by name; the markets will only be referenced as "local ethnic markets" or "major supermarkets." The Ombudsman believes that naming the other markets serves no public purpose.

DEPARTMENT OF NATURAL RESOURCES

The DNR's mission:

To conserve and enhance our natural resources in cooperation with individuals and organizations to improve the quality of life for Iowans and ensure a legacy for all generations.⁶

DNR Structure

Two commissions, the Environmental Protection Commission⁷ and the Natural Resources Commission (NRC)⁸, establish policy and adopt rules for specific chapters of the Code of Iowa enforced by the DNR. The sections of the Code of Iowa applicable to the DNR's investigation in this case fall under the authority of the NRC.⁹

The DNR is organized into three divisions: Conservation and Recreation, Environmental Services and Management Services. Within the Conservation and Recreation division are five bureaus: Fisheries, Wildlife, Forestry, Parks and Preserves and Law Enforcement.

The DNR's Law Enforcement Bureau (Bureau) is responsible for enforcing Iowa laws pertaining to fish, wildlife, boating, snowmobiling and all-terrain vehicles. Lowell Joslin is the Bureau Chief.

All but one of the Bureau's 98 employees are certified peace officers.¹⁰ Of these, 81 are conservation officers stationed throughout Iowa's 99 counties.

The State of Iowa is divided into six Conservation Law Enforcement Districts. The DNR's investigation took place in Polk County; Polk County is one of 16 counties in District 6. Lon Lindenberg is the District 6 Supervisor.

Craig Lonneman is one of two conservation officers assigned to Polk County. Officer Lonneman participated in the covert investigation but is not a member of the covert team. He maintained the documentation generated by the DNR's covert investigation and served as the DNR's liaison with the Polk County Attorney's office in this case.

⁶ DNR's website, <http://www.iowadnr.com/about.html>

⁷ Created under Iowa Code section 455A.6.

⁸ Created under Iowa Code section 455A.5.

⁹ See Iowa Code section 455A.5(6)(a).

¹⁰ Certified peace officers are trained and certified at the Iowa Law Enforcement Academy as provided in Iowa Code chapter 80B.

Laws Regulating Fishing

Iowa fishing regulations can be found in the Iowa Administrative Code (IAC), 571 IAC 81. There are specific regulations governing open season, territories, daily bag limits,¹¹ possession limits and length limits for inland waters of the state.

There are also regulations restricting how a fish can be caught. For example, when fishing by hook and line, you cannot use more than two lines or more than two hooks on each line when still fishing or trolling. There are restrictions on where and when trotlines and tip-up fishing devices can be used. It is also illegal to use any grabhook, snaghook, any kind of a net, seine, trap, firearm, dynamite or other explosives, or poisonous or stupefying substances, lime, ashes or electricity in taking or attempting to take any fish.

The laws more pertinent to this case concern the sale and purchase of fish. The store owners were charged with violating section 481A.136 of the Iowa Code.

481A.136 Unlawful commercialization of wildlife -- penalty.

1. A person shall not buy or sell a wild animal or part of a wild animal if the wild animal is taken, transported, or possessed in violation of the laws of this state, or a rule adopted by the department.
2. A person violating subsection 1 is guilty of a serious misdemeanor.

In this case, the owners of the Asian markets were charged with violating section 481A.136 because the fish were transported in violation of another law:

481A.23 Transportation for sale prohibited.

It shall be unlawful for any person, firm, or corporation, except as otherwise provided, to offer for transportation or to transport by common carrier or vehicle of any kind, to any place within or without the state, for the purposes of sale, any of the fish, game, animals, or birds taken, caught, or killed within the state, or to peddle any of such fish, game, animals, or birds.

The act of selling does not require money to exchange hands. “Sale” is defined in section 481A.1(30):

30. “*Sell*” or “*sale*” is selling, bartering, exchanging, offering or exposing for sale.

The term “game fish” is used throughout the Ombudsman’s report to identify fish that were not bought from a wholesale source. (This is the same term the DNR used in its press release.) Testimony from the DNR staff and the market owners indicated that fish

¹¹ According to the DNR’s *Iowa Hunting, Fishing and Trapping Regulations* publication: “Daily bag limit” or “possession limit” is the number of fish permitted to be taken or held in a specified time.

purchased from wholesalers arrive primarily in an individually, pre-packaged, frozen state.

Covert Operations

According to Chief Joslin, a former assistant chief with the DNR created a team of uniformed officers over 20 years ago that “could work above and beyond their assigned territory and do special covert investigations...” The covert team is currently comprised of seven conservation officers. Although some surrounding states have full-time covert officers, the DNR covert team members are required to complete their regular job duties in addition to conducting covert operations. Time constraints limit the covert team’s investigative focus to violations of federal law and commercialization activities.

Bureau Chief Joslin supervises the covert team and makes the decision when to initiate a covert investigation. The covert team has no designated leader within the group; “group decisions” determine the actions of the covert team. These decisions are made at scheduled monthly meetings, impromptu meetings or through phone conversations. There is little documentation about how decisions are made at the supervisory level or group level. Interview statements indicate that Bureau Chief Joslin is kept informed of the covert team’s decisions, as well as developments and progress on cases, to varying degrees depending on the nature and scope of the investigation.

They don’t need a lot of necessary written direction from me [Bureau Chief Joslin]. I can give them verbal direction, and they follow through with it. We make decisions as a group at times.

Approximately half of the covert team has received training at the Fish and Wildlife Service Training Academy, located in Glynco, Georgia at the Federal Law Enforcement Training Center. This specific training has not been available to states for five to eight years but Bureau Chief Joslin stated that if the training opens back up, “they [covert team members] will be in line to get there.” The DNR has provided additional specific training to the covert team on surveillance equipment and recording devices. Training is also provided at an annual meeting of covert investigators within the “association of Midwest fishing game law enforcement officers.” Budget constraints allow only two covert team members to attend this training, however Bureau Chief Joslin said the other covert team members often attend and pay their own way.

Covert team members have broad discretion in the investigative process, including if and when surveillance will take place and when to make “buys” – the purchase of an item or items. Both confidence buys and evidence buys are made during the course of an investigation. Evidence buys in most covert operations involve purchasing items that are the subject of the investigation. According to one covert team member, confidence buys of other items are made so “the people get used to seeing you in the store...” The DNR has no policy on when either type of buy should take place; the number, type and frequency of these buys is left to the discretion of the covert team member.

Expenditures for buys and other expenses associated with covert investigations are paid for through the Bureau's management budget.

Case Activity Reports

Bureau Chief Joslin implemented the statewide use of Case Activity Reports (CAR) and Case Incident Reports (CIR) in August of 2000 via the distribution of a manual entitled *Standard Operating Procedures for Investigative Reports*. In the manual's introduction, Bureau Chief Joslin states the following:

It is extremely important that we document our activities and that our case and/or incident reports continue to convey that our investigations and actions are complete, accurate, thorough, and impartial. In an effort to ensure quality and uniformity of reports and report writing, as well as to continue to develop professionalism within the bureau, our management team has decided we need to begin implementing this report writing system.

CIR's are required if any single incident requires two or more CAR's. The manual lists specific situations in which CARs are mandatory. However, writing a CAR is only "highly recommended" when investigating more serious violations such as "the sale of game or fish." Copies of the CARs must be forwarded to the respective district supervisor.

SYNOPSIS OF THE DNR'S COVERT INVESTIGATION

In August 2002, Officer Lonneman received information from a confidential informant indicating that Ting's was selling game fish. Officer Lonneman contacted a covert team member and requested he visit Ting's to ascertain whether game fish were being sold. After this initial visit, Bureau Chief Joslin made the determination to start a covert investigation. Bureau Chief Joslin said initiating a covert operation would allow the DNR to gather intelligence information to determine if there was a violation of Iowa law.

After the covert team started investigating Ting's, Officer Lonneman said the group – he, Bureau Chief Joslin and the covert team members – believed it was necessary to visit other markets to determine if game fish were being sold at these locations. The covert team members visited a total of eight ethnic and seven non-ethnic markets in Polk County during the course of the investigation. Multiple visits were made only to the ethnic stores. Of these 15 markets, three were identified as selling game fish: Ting's, Jung's and Des Moines Asian. A covert team member also visited three ethnic markets in eastern Iowa during the investigation.

The DNR's investigation lasted almost three months.¹² Between August 25 and September 13, 2002, the covert team conducted surveillance of Ting's in an attempt to identify the scope of the commercialization and the fishermen. Surveillance included, stake-outs, video taping from a neighboring building, tracking fishermen and videotaping purchases of game fish. A total of 29 visits to Ting's by various covert team members occurred between August 10 and October 20. On each of these occasions, game fish were either purchased or observed for sale.

During the course of the surveillance, covert team members followed fishermen to Red Rock Dam in Marion County. One of the covert team members caught some game fish, "fin-clipped" the fish for identification purposes and gave them to the fishermen. Covert team members then followed the fishermen to a residence and watched the fishermen unload a cooler containing the game fish. The following day, covert team members observed the fishermen place the cooler back in the car and deliver the game fish to Ting's. A covert team member subsequently entered the store and purchased some of the game fish that had been fin-clipped.

The surveillance identified seven individuals (fishermen) delivering game fish to Ting's. No other fishermen were identified after surveillance ended on September 13. Covert team members continued to visit stores into the month of October to determine whether other game animals, such as deer and squirrel, were being sold.

¹² Appendix B is a detailed chronology of the DNR's investigation.

Various covert team members visited Des Moines Asian a total of eight times between September 6 and October 20. The covert team members identified (and purchased) game fish for sale on three occasions. There was no surveillance conducted.

Various covert team members also visited Jung's on seven occasions between September 18 and October 20. The covert team members identified (and purchased) game fish for sale on two occasions. There was no surveillance conducted.

Bureau Chief Joslin, Officer Lonneman and covert team members jointly made the decision to end the investigation in mid-October and seek a search warrant. Officer Lonneman went to the Polk County Attorney's office in Des Moines and met with an Assistant County Attorney to discuss the DNR's case. Officer Lonneman made an application for a search warrant for Ting's after this meeting. He then contacted the Des Moines Police Department to notify them the DNR was going to be executing a search warrant within the police department's jurisdiction and to request that one of their officer's accompany the DNR as an interpreter. Seven covert team members, Officer Lonneman, Supervisor Lindenberg and three Des Moines police officers jointly executed the search warrant at 10:45 a.m. on October 21, 2002.

The owners of Ting's were interviewed by Officer Lonneman and a covert team member during the execution of the search warrant. Other DNR staff searched the store and seized 137 game fish. A Des Moines police officer provided translation when the DNR staff questioned three employees; his services were not requested for interviewing the owners of Ting's.

After executing the search warrant at Ting's, three covert team members and Des Moines police officers performed consent searches and conducted interviews at Des Moines Asian and Jung's; 12 game fish were seized at Jung's. The Des Moines police officer's services as an interpreter were not utilized at either location.

Formal action was not taken against the owners of Ting's until a trial information was filed on November 22 charging each of the two owners of Ting's with 20 counts of unlawful commercialization of wildlife. A guilty plea and sentencing order were filed with the Court on the same day. A Memorandum of Understanding between the owners and the County Attorney's office was signed the previous day. These actions resulted from conversations and meetings between the store owners, their attorney, an Assistant County Attorney and Officer Lonneman.

Preliminary Complaints were filed in the Polk County District Court on November 25, 2002 charging the fishermen and the owners of Jung's and Des Moines Asian with unlawful commercialization of wildlife. The owner of Jung's was charged with eight counts and the owner of Des Moines Asian was charged with four counts. Both plead guilty to lesser counts and made charitable contributions. The seven fishermen were charged with a total of 85 counts of unlawful commercialization of wildlife.

Unlawful commercialization of wildlife is a violation of 481A.136 of the Iowa Code:

481A.136 Unlawful commercialization of wildlife -- penalty.

1. A person shall not buy or sell a wild animal or part of a wild animal if the wild animal is taken, transported, or possessed in violation of the laws of this state, or a rule adopted by the department.
2. A person violating subsection 1 is guilty of a serious misdemeanor.

Iowa law establishes fines for serious misdemeanors in section 903.1; the range is between \$250 and \$1500 per count. In addition, the court may order imprisonment not to exceed one year. The owners of Tings also paid civil damages of \$15 per fish as provided under section 481A.130.¹³

Asian market owners	# of fish seized or purchased by the DNR	# of counts charged	Sentence	
			Counts	Fines and Penalties
Ting's	348	40	40	<ul style="list-style-type: none">• \$500 per count (total \$20,000)• \$1,692.25 restitution• \$5,220 (\$15 per fish civil damage)• \$6,000 surcharges
Jung's	20	8	2	<ul style="list-style-type: none">• \$500 charitable contribution• Court costs
Des Moines Asian	5	4	1 ¹⁴	<ul style="list-style-type: none">• \$1000 charitable contribution• Court costs

¹³ Section 481A.130 (1) states in part: "In addition to the penalties for violations of this chapter a person convicted of unlawfully selling, ... shall reimburse the state for the value of such as follows: ... d. For each fish, ... fifteen dollars." The Ombudsman notes that the owners of Jung's and Des Moines Asian were not assessed this penalty.

¹⁴ This number was quoted in a January 9, 2003 Des Moines Register article as the offer that was made to the owner of Des Moines Asian in the plea bargaining process. The Ombudsman was unable to confirm this number through court records because the file was expunged.

ANALYSIS AND CONCLUSIONS

Issues

From the complaint information, the Ombudsman identified the following issues regarding actions the DNR took in the investigation, surveillance and subsequent criminal prosecution of the Asian markets.

1. Whether the DNR treated the Asian markets differently from other Polk County area markets?
2. Whether the DNR did not make any attempts before the filing of criminal charges to educate, notify, or warn the Asian markets that their actions violated Iowa law?
3. Whether the DNR prolonged the investigation unnecessarily, allowing continuing or repeat violations which factored into an excessive number of criminal charges filed?

During the course of the investigation, the Ombudsman also identified the following issues:

4. Whether the DNR complied with documenting provisions as set forth in the DNR's *Standard Operating Procedures for Investigative Reports*?
5. Whether the DNR's cultural awareness training is adequate?
6. Whether the DNR's educational efforts sufficiently identify and explain the provisions of the law regarding unlawful commercialization of wildlife?

Issue 1: Whether DNR treated the Asian markets differently from other Polk County area markets?

Conclusion: The Ombudsman concludes the DNR did not unfairly treat the Asian markets differently from other Polk County area markets. DNR received information specifically identifying Ting's as the market selling game fish. Although DNR visited over a dozen other stores in Polk County and eastern Iowa, it was understandable Ting's remained the focus of the investigation because it appeared to the DNR that a large number of game fish were being delivered and sold at this market. The scope of the investigation of Jung's and Des Moines Asian was limited because the evidence did not find these markets were purchasing large amounts of game fish.

Officer Lonneman testified that a confidential informant provided information specifically identifying Ting's as the market selling game fish. He said this was consistent with complaints he had received throughout his career as a conservation officer.

I would receive complaints – never specifically every year – but throughout the course of my career, about the concern of large amounts of fish being removed from our lakes and streams and what these folks – particularly the ethnic groups – might be doing with these fish. But the information was never specific.It was suggested several times that they felt these people may be selling them, never a specific group, never a specific market. It was last summer [2002] that that information – there was a specific market provided to me through an informant that was selling game fish. This informant had a conversation with somebody on the river that suggested this market was selling fish.

Officer Lonneman shared this information with a covert team member, who visited Ting's on August 10 and purchased five game fish. Bureau Chief Joslin testified he made the decision to conduct a covert operation.

The Case Activity Reports (CAR)¹⁵ completed by the DNR officers during the covert operation identified 15 markets by name¹⁶ in Polk County. Members of the covert team visited these markets to ascertain if there were game fish being sold. Eight of the markets could be described as ethnic markets; three were the Asian markets criminally charged as the result of the DNR's investigation. A covert team member also visited three Asian markets in eastern Iowa to determine if the sale of game fish was widespread. Officer Lonneman said the decision was made to visit other markets to "satisfy administration and even maybe our own members of the investigative team, we wanted to make sure it wasn't something that was going on in other markets." Officer Lonneman's statements were consistent with the testimony of the other DNR witnesses.

The covert team members did not conclusively identify any game fish being sold in violation of Iowa law in the other markets. A covert team member explained how the covert team members could tell the game fish were "fresh" rather than purchased from a wholesaler:

They weren't frozen, and the gill plates were still very red. If a fish lays very long out of the water, the gill plates start turning, and they get whitish and then black. If the gill plates are very bright red, you know the fish is pretty fresh.

Officer Lonneman said that although Jung's and Des Moines Asian were selling game fish, it was not necessary for the DNR to conduct all-day surveillance because "the opportunity to actually watch the delivery would probably be luck, just given the volume of fish that were being sold at those markets."

¹⁵ See page 8 of this report for additional explanation on Case Activity Reports.

¹⁶ One Case Activity Report only identified the stores visited on that particular date as the "other Asian markets in Des Moines."

A covert team member said he could not understand why someone would think they were picking on a certain group; "... we just felt like we were stopping somebody that was selling a lot of our game fish...."

The Ombudsman cannot conclude the DNR's decision to focus their investigation on Ting's was unwarranted. The evidence and the volume of game fish in the store clearly indicated Ting's was moving a large number of game fish through their store. Nor can the Ombudsman conclude the DNR focused only on Asian markets. The DNR visited other ethnic and non-ethnic markets in Polk County to ascertain whether those markets were also selling game fish in violation of Iowa law.

Issue 2: Whether the DNR did not make any attempt before the filing of criminal charges to educate, notify, or warn the Asian markets that their actions violated Iowa law?

(Whether the DNR's decision not to educate, notify or warn the Asian markets prior to filing criminal charges was unreasonable?)

And our only purpose for existing is to get people to comply with the law, and there's law enforcement through education and education through law enforcement and whichever way you look at it or use it, officers have the distinction of giving verbal warnings, writing citations. If we feel that in our judgment or the officer's judgment the case should be raised to a higher level, we may end up doing some kind of covert investigation or we may not depending on what the activity is ..." *Bureau Chief Lowell Joslin*

Conclusion: The Ombudsman concludes the DNR acted reasonably when it referred violations by the Asian markets to the county attorney for prosecution, rather than issue warnings or notify them of the violations. In making this determination, the Ombudsman considered whether there were reasonable bases for the DNR's decision, in view of existing laws and information available to the DNR at the time. The DNR had no legal duty to educate, notify or warn the Asian markets that purchasing and selling game fish was illegal. When enforcing the laws, the DNR's conservation officers must use their judgment and discretion in exercising their authority.

The DNR considers unlawful commercialization of wildlife a serious offense, a contention it believes is supported by the fact that the offense is a serious misdemeanor under Iowa law. In addition, the DNR staff believed the extent of the violations by Ting's warranted criminal prosecution. The actions and behavior of the market owners or employees led the DNR to believe they knew what they were doing was wrong. The scope of the problem extended to three stores and seven fishermen. These were the primary factors that guided the DNR's actions and decisions. The DNR did consider possible cultural differences, but they believed the

market owners, especially Ting's, had become assimilated into the Iowa culture, due to the amount of time they had lived in Iowa. Given these considerations, the Ombudsman cannot conclude the DNR exercised its discretionary authority unreasonably.

The Ombudsman notes that, once the DNR determined the seriousness of the violations, its only option to sanction the market owners was to seek criminal prosecution. There is no alternative under current Iowa law to penalize violators through an administrative process.

The Ombudsman was unable to identify any laws, rules or policies mandating or providing guidance to the Bureau regarding education, notification or warning of potential violators. Bureau Chief Joslin said the DNR attempts to achieve uniformity of its enforcement efforts by providing memos and verbal directives. The DNR's Employee Handbook includes a section entitled *Code Clarifications*. This section does not contain any clarifications to the law regarding unlawful commercialization of wildlife (Iowa Code section 481A.136).

As stated earlier, the DNR's officers are certified peace officers. All peace officers, regardless of who their employer might be, use some judgment and discretion in enforcing certain provisions of the law. For example, a peace officer can choose whether to ignore, warn or issue a citation to a motorist who is exceeding the speed limit. When the DNR director, Jeffrey Vonk, was asked why a warning was not issued in this case, he responded:

Well, again, this is really a judgment. What we're doing is questioning the judgment of the individuals involved. It strikes me that in the day-to-day operations of every officer, they are being asked to make a judgment regarding the level of the seriousness, if you will of the violation. I don't believe that they probably issue a citation or an arrest warrant for every violation that they discover. I think that's probably the case for all law enforcement activities; that there has to be a level of discretion and judgment afforded to the officers that are on the scene.

Factors in Decision to Prosecute

Testimony from the other DNR staff confirmed that the seriousness and extent of the violations were factors in the DNR's decision to pursue prosecution of the Asian markets, especially Ting's. The reasons given by the DNR staff included:

1. The law sets a higher penalty for unlawful commercialization of wildlife so the DNR treats these violations seriously.
 - a) "... if you've researched the commercialization section of our code, virtually all our fishing game violations are simple misdemeanors, but the commercialization charge is up a notch. It's a serious misdemeanor, and I'm fairly confident that the legislature put that law into effect the way they did because they feel it's one thing for a person to fish without a license, but it's a

- little higher crime for someone to commercialize off of fish that were taken legally or illegally.”¹⁷ Bureau Chief Joslin
- b) “It’s [fishing without a license] not a serious violation. It’s important, but it’s not the magnitude of a commercialization charge.” Officer Lonneman
 - c) “It doesn’t matter whether they’re selling a fish, a squirrel, a rabbit, or a deer. It’s putting a price on our wildlife. That can’t be tolerated or we won’t have any.” Covert team member
2. The scope of the problem was not limited to one store.
 - a) “... not just one fishermen but I think in this case nine fishermen. Subsequently selling fish at not just one market but three markets and not at other markets that we checked for that same type of activity.” Bureau Chief Joslin
 - b) “...”And there were so many people involved. There was I think seven or eight fishermen and three markets.” Officer Lonneman
 3. The markets knew what they were doing was wrong.
 - a) “Typically, the fish weren’t coming through the front door.” Officer Lonneman
 - b) On at least two occasions, store employees at Ting’s indicated the game fish were from Chicago. Covert team member
 - c) “Usually the delivery guys don’t stop and look both directions and then open their trunk and grab something and run up the steps.” Covert team member
 4. There was a large number of game fish being sold.
 - a) Extrapolated estimate that 15,000 to 18,000 pounds of game fish went through Ting’s in the last two years. Officer Lonneman
 - b) “If you had someone selling hundreds of those and making money off them, you kind of think that maybe they need to be punished rather than warned.” Covert team member

The testimony supports a finding that the DNR’s decision to seek criminal charges were driven by their knowledge, view and understanding of the seriousness of the violation, the scope and extent of the violation and the actions and comments made by store employees and the fishermen (especially in Ting’s case). Given the information known and considered by the DNR, the Ombudsman cannot conclude the DNR’s decision to pursue criminal charges rather than to warn, notify or education was unreasonable.

Consideration of Cultural Differences

The Bureau developed curriculum entitled “Cultural Awareness” about five years ago for the Conservation Officer Training Academy. The curriculum (Appendix C) includes the following publications:

¹⁷ The Ombudsman’s search of the Code of Iowa provisions enforced by the Natural Resources Commission, chapters 461 through 466 and 481 through 485, confirmed that very few violations are serious misdemeanors; Simple misdemeanors (461A.4, 461A.42, 461A.57, 462A.12, 462A.13, 481A.9, 481A.18, 481A.32, 481A.33, 481A.34, 481A.124, 481A.125, 481A.135, 481B.10, 482.15, 483A.24A, 483A.27, 483A.42, 484A.6, 484B.14) Aggravated misdemeanors (481A.33, 481A.135), Serious misdemeanor (462A.7, 462A.14, 462A.14, 462A.25, 481A.125, 481A.135, 481A.136) All but two of the serious misdemeanor penalties applied to boating violations.

- ✓ *Four Part Guide on Refugee Issues*
The DNR acquired this document, dated December 1990, from the Iowa Bureau of Refugee Services.
Part 1 – Refugee Myths and Facts
Part 2 – An Asian View of Hunting and Fishing in Iowa
Part 3 – Asian Attitudes Towards Authority
Part 4 – Effective Communication: Providing Services With An Interpreter
- ✓ *The Problem of Cross Cultural Conflict in Conservation Ethics*
The DNR acquired this document, published in 1992, from the Minnesota Department of Natural Resources.

Bureau Chief Joslin testified, “We gave cultural awareness training to all officers several years ago.” When asked for a time frame in which this training might have occurred, Bureau Chief Joslin responded “...ten to fifteen. And maybe even twenty [years].” Officer Lonneman and a covert team member acknowledged receiving cultural diversity training at intervals over their career but they had not received it in the form of this specific curriculum. A covert team member offered that “...Lowell [Joslin] was pretty adamant about getting those kinds [cultural awareness] training in.” The adequacy and the frequency of the cultural training is addressed in more detail in Issue 5 of this report.

Officer Lonneman said he has been trained to understand that fishing is a “way of life” for some members of the Asian community and may even be a matter of survival. He believed this was reflected in the pleas that were offered to Ting’s. Despite the seriousness of the violations, Officer Lonneman said the DNR chose to cite the Asian markets, rather than “arrest everyone that was involved” – which would have then required the store owners to post bond. Officer Lonneman said issuing citations was more convenient for the store owners and it was an effort to encourage cooperation: “Given the nature of my agency and the way we typically work with compliant folks, arresting wasn’t anything that was in our interest. We try to encourage cooperation, and by citing them out, at least it’s a sign that we are encouraging cooperation.”

The curriculum indicates certain ethnic cultures will reply to questions with expected responses to avoid conflict. Officer Lonneman said he did not feel he was getting admissions or answers of yes when he felt they meant something else, “Usually when I got a response of yes, it was consistent with information that was provided to them, that they knew or we knew...” All of his discussions with the owners of Ting’s were in a controlled setting in the owners’ office during the execution of the search warrant. And he noted that many of the questions were asked a lot of times, on several different occasions and with the owners’ attorney present.

Bureau Chief Joslin remarked that Officer Lonneman had the foresight to arrange for an interpreter to be present at the execution of the search warrant, “just in case.” A Des Moines police officer testified he was told from the beginning he was supposed to be there in case the store owners did not understand what the DNR tried to explain or

communicate to them. He said the only assistance he provided was in questioning employees.

Bureau Chief Joslin said that while cultural differences were a consideration, they would not have led him to totally disregard the need for an investigation. Bureau Chief Joslin said he did not believe the owners of Ting's were recent refugees, nor did he believe a language barrier existed. A covert team member stated the following regarding the owners of Ting's:

...I guess what constitutes a "refugee"? How long does a person have to be in this county to still be considered a refugee? I mean, how long have the people that run that market been in this country? Since the sixties? ... You know, that's 40 years. Are they still considered a refugee....We didn't go into this – any of this with anything in mind, whether they were – I mean, their ethnic background. It was just a – It was just an investigation that we felt was necessary.

Ting's attorney agreed that the owners had assimilated into the American culture:

I think they've assimilated quite well, extremely well based upon their wealth accumulation, based on their real estate holdings on Second Avenue. ...

The owners of Ting's had operated their store since 1987. The testimony of the owners of Jung's and Des Moines Asian indicated they had owned or worked in their markets for 3.5 years and 10 years respectively.

As stated earlier in this report, the DNR's decision to seek criminal charges was driven primarily by its knowledge, view and understanding of the seriousness of the violation, the extent and scope of the violation and the actions and comments made by store employees and the fishermen (especially in Ting's case). Although the DNR did not give cultural differences the same weight as these other factors, the Ombudsman cannot conclude the DNR disregarded cultural differences in their decisions.

Limited Options

The DNR did not have any other options to penalize the markets besides prosecution, once they determined the scope and seriousness of the violations warranted more than a warning. Conservation officers did not have the option of pursuing penalties through an administrative process.

It is interesting to note that when a fish kill occurs as the result of a manure spill, the Environmental Protection Commission (EPC)¹⁸ has the authority to under section 455B.109 to administratively assess penalties. In addition to the administrative penalty, the EPC can assess a monetary penalty for each fish, the value of lost services to the public and the cost of the DNR's investigation.¹⁹ This provision of the Iowa Code also specifically directs to EPC to consider "relevant factors" in proposing or assessing a

¹⁸ The EPC enforces the provisions of Iowa law pertaining to hog confinement operations.

¹⁹ 567 IAC 133.6(3)

penalty, including the gravity of the violation and the degree of culpability of the violator. The Ombudsman recommends the DNR explore seeking legislation to create a similar administrative procedure by which the DNR can assess penalties in lieu of or independent of criminal charges for unlawful commercialization of wildlife.

Issue 3: Whether DNR prolonged the investigation unnecessarily, allowing continuing or repeat violation which factored into an excessive number of criminal charges?

Issue 3 (a): Whether the DNR prolonged the investigation unnecessarily?

Conclusion: The Ombudsman concludes the DNR did not unnecessarily prolong the investigation. The length of an investigation is often determined by the season of the year and the availability of the game. The Ombudsman's review of investigations (involving unlawful commercialization) in other states found many investigations took longer than the DNR's three month investigation.

The Asian market investigation lasted almost three months because the DNR was attempting to:

- Identify the fishermen, as well as the markets involved.
- Determine if other game, including squirrel and deer, were being sold by the markets.

Also potentially adding to the delay was that covert work is an "additional" job; the covert team members are required to complete their regular job duties in addition to their covert work.

All the DNR staff testified that investigations are usually seasonal and may last for years. Bureau Chief Joslin provided the following explanation regarding the seasonal aspect of investigations:

... I mean if we have a hunting – a hunting-type case, we may only be able to work on that in December or November, December. If it's a fishing case, we obviously only can work on those in the summer of the year when we have fishing activity going on.

So we have – in some cases – I mean, we may start a fishing case in the fall of the year when the fishing season is over, we may have assigned a number to that case, but I don't actually do any real work on it until the next year when the season comes around for that activity.

The Ombudsman reviewed press releases on the Internet of similar investigations involving unlawful commercialization of wildlife in other states. The length of these investigations varied widely; some investigations lasted longer than four years and only a few were completed within a year.

The DNR staff involved in the investigation consistently testified that the DNR wanted to know who was selling the fish to the markets; for this reason, the investigation did not stop after the first purchase of fish at Ting's. A covert team member explained:

The goal of the whole operation was to first find out the seriousness of what they were doing and if they knew what they were doing and then put a stop to it, but we wanted all the parties involved. We just didn't want the store. We wanted the people that were selling it as well as the people that were buying it.

In addition to identifying all the parties involved, Bureau Chief Joslin, Officer Lonneman and a covert team member asserted that the investigation was extended into deer hunting season²⁰ to ascertain whether other game was being sold in the markets. The CAR's make no mention of searching for other game.²¹ The Ombudsman did find reference to other game in a confidential document. The following testimony from Officer Lonneman was corroborated by other DNR witnesses:

The intent of the investigation was to see if there was an ongoing practice, and that was probably true for the first part. And then as a team, there is interest in monitoring if other game was being sold at some of these other ethnic markets as well.

In my practice as a conservation officer, I know and had conversations with other conservation officers that have seen squirrels and deer and other small game animals that may have been provided for sale. These animals are usually taken a little later in the season.

Squirrel season, for example, starts the first of September. Most of the hunting is primarily done in the middle to late September. The deer season starts October 1 and runs through the end of December.

I think as a team, we're interested in seeing if other game is being offered for sale in these particular markets as well. Hence the investigation continued at a much slower pace until around the first part of October, until it was decided that – We concluded we hadn't seen any squirrels or other small game animals or other deer show up in these particular markets.

We were satisfied by the first part of October that we didn't need to monitor these markets any longer to identify if any other game may have been sold. There may have been a benefit to run it into the shotgun deer season. We didn't feel it was necessary at this point. We didn't see any indicators running into the first part of October that there was any other game being sold at this market.

Bureau Chief Joslin told the Ombudsman he would have extended the investigation longer but the covert team convinced him that there was no need to "go any farther with this."

²⁰ The dates of the various deer hunting seasons change slightly from year to year but generally, archery begins in early October, muzzle loader season begins in mid-October and the shotgun season is in December.

²¹ This lack of documentation is addressed in Issue 4 of this report.

The covert team members' ability to complete an investigation was also limited by other obligations; the team members are required to complete their regular job duties in their respective districts in addition to their covert work.

Issue 3 (b): Whether the duration of the investigation adversely affected the number of criminal charges or the amount of fines and penalties?

Conclusion: The Ombudsman concludes ending the investigation sooner would not have necessarily resulted in fewer charges or smaller fines and penalties against the Asian markets. Iowa law states that each charge for unlawful commercialization shall be set forth as a separate count. The fines and penalties are also established in law. The number of game fish bought and seized during the course of the DNR's investigation was significantly higher than the resulting counts charged for Ting's. The difference between the number of counts charged and the number of fish purchased or seized at the other two Asian markets was less significant. Since the number of game fish in the markets varied from day to day, it is difficult, if not impossible, to determine if ending the investigation sooner would have meant in fewer charges or fines to the markets. This is especially true for Tings.

By September 13, 2002, the DNR had established an evidentiary trail when they purchased fish at Ting's that a covert team member had previously fin-clipped and given to some fishermen. The DNR did not identify any more fishermen after September 13, 2002. An argument could be made that the investigation could have ended at that point. But, as discussed earlier, the DNR testified the surveillance continued through early October to ascertain whether the markets were selling other game.

The owners of the Asian markets and fishermen were all charged with unlawful commercialization of wildlife. Iowa law²² requires each charge be set out in a separate count. This meant that the owners of Asian markets could have potentially been charged for each fish seized or purchased by the DNR.

The owners of Ting's were each charged with 20 counts of unlawful commercialization on the date the search warrant was executed. On that day alone, 137 game fish were seized. A total of 348 game fish were bought or seized over the course of the DNR's covert investigation. (Obviously the charging decision is not reflective of the actual number of game fish seized or bought at Ting's). Fines, penalties, surcharges and restitution totaled \$32,912.25.²³ They also received a 20 year suspended sentence and 12 months of informal probation.

²² Iowa Code section 481A.36

²³ The \$32,912.25 is the total of the following figures: 1) Civil damages of \$15 per fish per 481A.130. \$15 x 348 fish seized or purchased = \$5220. 2) \$500 fine plus surcharge on each count per 903.1 – each owner plead guilty to 20 counts. \$500 x 40 counts = \$20,000 plus \$6,000 in surcharges = \$26,000 (The maximum penalty per 903.1 is \$1,500 per count.) 3) Restitution to the DNR = \$1,692.25.

The unknown variable, especially as it relates to Ting's, is the number of game fish in the store or on display on any one day. On only one occasion did the covert team members purchase all the fish available for sale. According to the covert team member, the reason he purchased 96 fish on one day was to "see if I could buy all they had, and it didn't work." Officer Lonneman also indicated that the purchases were "always a small representation of what was available, and there's days we didn't buy fish." Had the DNR purchased all the game fish available over the course of any one day, the 211 total (number of game fish bought by the DNR prior to the execution of the search warrant) could have been less or more. Had the DNR issued their search warrant a day earlier or later, the 137 total fish seized during the execution of the search warrant could have been higher or lower. In other words, there is no certainty that ending the investigation earlier would have meant fewer counts charged – for any of the markets – as long as the markets engaged in the practice of buying game fish from local fishermen.

In the case of Ting's, even assuming the DNR had ended the investigation on September 13, 2002, it would not necessarily have resulted in fewer charges or substantially lesser penalties. By that date, the DNR had purchased 153 game fish from Ting's. The total fines and civil penalties for 153 game fish potentially could have exceeded what the owners of Ting's ultimately were sentenced to pay in terms of total fines and penalties.

Fines and Penalties for Fish Kills Resulting from Manure Spills

Several newspaper articles published in late 2002 regarding the DNR's actions in this case noted that the penalties assessed to the Asian markets were excessive in comparison to the fines imposed by the DNR for fish kills resulting from manure spills. This is not an accurate comparison because the greatest monetary impact on the Asian markets was the penalties established by Iowa Code for a serious misdemeanor; the amount of the fine imposed is the Court's decision.

The provisions of the law set forth different penalties for fish kills resulting from manure spills versus unlawful commercialization of fish. When a fish kill occurs as the result of a manure spill, the Environmental Protection Commission (EPC)²⁴ has the authority under section 455B.109 to administratively assess penalties up to \$10,000 per violation. In addition to the administrative penalty, the DNR can assess a monetary penalty for each fish, the value of lost services to the public and the cost of assessing the loss.²⁵ Section 455B.109 also specifically directs the EPC to consider specific "relevant factors" in proposing or assessing a penalty, including the gravity of the violation and the degree of culpability of the violator.

Aside from this penalty, the DNR can impose a civil penalty for each dead fish. The DNR took steps in 2002 to increase the civil penalties per fish²⁶ (for manure spills and other sources of groundwater contamination) through the administrative rule process to

²⁴ The EPC enforces the provisions of Iowa law pertaining to hog confinement operations.

²⁵ 567 IAC 133.6

²⁶ 567 IAC 133.6(3)

match the provision for per fish penalties set forth in Iowa Code chapter 481A governing wildlife conservation.²⁷

The DNR's Natural Resources Commission (NRC) has administrative rules that specifically address restitution for pollution causing injury to wild animals, 571 IAC 113. These rules are similar to EPC's rules referenced in the preceding paragraph.

Issue 3 (c): Whether the DNR's role in the charging decision had any affect on the number of criminal charges?

Conclusion: The Ombudsman finds the DNR staff had minimal role in the charging decision. The charging decision rested with the County Attorney.

The DNR had the option of citing the Asian markets for violating 481A.32,²⁸ a simple misdemeanor. Bureau Chief Joslin said that "every other" violation conservation officers write is under 481A.32, unless there is a higher penalty; 481A.136 is a higher penalty and it is a more recent law within Iowa Code chapter 481A.

Officer Lonneman testified he met with an Assistant County Attorney sometime in early October²⁹ and he confirmed they discussed all the statutes that applied.

Q. What did you discuss at the meeting?

A. We discussed the investigation, what had took place up to this point. I outlined some statutes that we wanted to talk about, the illegal transportation of fish. We had discussions about the commercialization of wildlife and whether the elements were met in this particular case.

We talked about the interest of conducting a search warrant for some of these other items that may be of interest, such as documents and more fish. I asked questions about what kind of things he needed if we decided to do a search warrant, so we talked about buys and how information can become stale. And he was interested in if we were going – If the search warrant was executed, that we had some at least on a recent time frame, some buys in that recent week prior to the execution of the search warrant. So any reasonable person including a judge could reasonably think that these items could be found yet at that market. And that was done."

²⁷ 481A.130(1)(d)

²⁸ Section 481A.32 states in part: "Whoever shall ...buy, sell,...fish ... in violations of provisions in this chapter ...is guilty of a simple misdemeanor and shall be assessed a minimum fine of twenty dollars for each offense."

²⁹ Officer Lonneman could not recall the exact date but his bi-weekly "Fish & Game Officers Report" indicates a notation on October 1, "U.C. work. CO. ATTORNEY."

Jung's and Des Moines Asian were discussed in a "smaller capacity." Officer Lonneman and the Assistant County Attorney decided that the DNR would not seek search warrants for these two markets because they were involved on a much smaller scale.

After the execution of the search warrant, Officer Lonneman, the Assistant County Attorney, Ting's owners and their attorney met. Ting's attorney testified he set up the meeting to see what evidence the County Attorney's office had against his clients. He said Mr. Lonneman's presence at the meeting was to gather additional information about the fishermen, including the quantities of fish sold by the fishermen. He also said – and the other witness's testimony concurred – the DNR had a minimal role, if any, in the final plea agreement. According to a covert team member, a conservation officer's role in any investigation is to present the information to the county attorney with jurisdiction over the case and ask for their opinion.

Ting's attorney said he and the Assistant County Attorney "worked out" the counts and fines in the charging decision, the plea agreement and the Memorandum of Understanding between the County Attorney's office and the owners of Ting's.

While the Ombudsman finds the DNR had some input into the charging decision, the Ombudsman concludes the decision to charge rested with the County Attorney.

Issue 4: Whether the DNR complied with the documenting provisions as set forth in the DNR's *Standard Operating Procedures for Investigative Reports*?

Conclusion: The Ombudsman concludes the DNR staff did not always adhere to the documenting provisions set forth in the DNR's *Standard Operating Procedures for Investigative Reports*. In August of 2000, the DNR implemented a state-wide procedure for writing investigative reports with the issuance of a manual entitled *Standard Operating Procedures for Investigative Reports*. The manual provides direction as to when Case Activity Reports (CAR) should be written and what information the reports should include. The use of CARs, while mandated in certain situations, are only "highly recommended" for cases involving the sale of game or fish. The Ombudsman's review of the DNR's covert investigation found that the conservation officers who participated in the investigation did not always follow procedure for reporting as outlined in the manual. In addition, there was confusion amongst the DNR staff about how certain provisions in the manual applied to the covert team members.

As stated previously in this report, Bureau Chief Joslin implemented the statewide use of Case Activity Reports (CAR) and Case Incident Reports (CIR) in August of 2000 through the distribution of a manual entitled *Standard Operating Procedures for Investigative Reports* (manual).

In the manual's introduction dated August 2, 2000, Bureau Chief Joslin identified a number of reasons for implementing a standardized reporting system, including:

- ✓ Our goal with this SOP [Standard Operating Procedures] and Report Writing Manual is to give officers the tools needed to implement this report writing system and to help you better understand what is expected with regard to report writing and when reports need to be submitted.
- ✓ In an effort to ensure quality and uniformity of reports and report writing, as well as to continue to develop professionalism within the bureau, our management team has decided we need to begin implementing this report writing system.
- ✓ ...We need to minimize the time spent by a prosecutor in reviewing and prosecuting our cases.

The manual lists situations mandating the preparation of a CAR. This list includes circumstances involving high speed pursuit, use of force and execution of a search warrant. Investigating the sale of game fish, however, does not require writing a CAR:

It is **highly recommended** that you write a CAR when investigating more serious violations. (i.e. deer cases, sale of game or fish, commercialization cases, baiting cases, trespass, stolen property – ATV's, boats, etc.). This will help you track and document progress in the case – particularly if it becomes a lengthy and involved case. This is particularly important when you need assistance from other officers – the reports can then be used to update them as the history and details of the case. Copies of these reports must also be forwarded to your supervisor. (Emphasis added.)

The Ombudsman questions why CAR's are not mandatory for serious violations such as unlawful commercialization of wildlife. The DNR staff involved in the investigation did not always follow the CAR format, even though the manual said it was "highly recommended" for serious violations such as in the sale of fish. In some instances, covert team members and conservation officers used other formats. The testimony of a covert team member offers the following explanation of the use of CAR's:

Q. So the case activity reports that are filed as part of an investigation, explain those to me. When you do one of those, what triggers one of those?

A. Everything – Anytime we do any type of investigation, we're supposed to make out a report of what we did and where we were at and what happened.

Q. So if you're doing undercover work on any particular day and nothing happens, do you do an activity report that says, "I did this, and nothing happened"?

A. Yes, We're supposed to.

W. You keep saying, "supposed to."

A. Yeah, you're supposed to. Well, I hope so.

Q. And then who do you file this with?

A. If it's -- Lowell sometimes. Sometimes we just keep them. Sometimes they go to -- If we have somebody that we think -- if we have a partner, you know, you might send a copy to him just for him to put in his file for that case or whatever.

A lot of times we just keep them ourselves.

The Ombudsman identified three occasions when a buy occurred but a CAR was either not prepared or not provided to the Ombudsman. The Ombudsman finds that the DNR staff involved in the covert investigation did not always prepare a CAR as recommended by the manual.

Bureau Chief Joslin testified that the CAR's are the preferred format "we're hoping to have all officers use" but he admitted he had never "pushed" the special investigators to use the same kind of format for their case reports. The Ombudsman finds this puzzling as all covert team members are conservation officers. Since the reasoning behind implementing standardized documentation involves prosecution and the activities of the covert team often results in criminal charges, it is the Ombudsman's opinion the requirements set forth in the manual should apply to covert team members.

The manual provides additional guidance regarding CAR's: Remember: "If it isn't in the report, it didn't happen." The manual also directs officers to prepare CARs to document attempts to locate evidence, witnesses, records, documents, as well as other possible leads, "Your CAR should report successful as well as unsuccessful attempts."

Aside from one confidential document, all documentation generated by the DNR's covert operation is silent on the monitoring of the markets for other game animals. The testimony of the witnesses indicated if no other game animals were found, there would be no mention of such in the officer's report (or CAR). This appears to contradict the directions set forth in the manual. The Ombudsman believes the CAR's or other documents related to the investigation should have reflected that the DNR was looking for other game, especially since this is the reason the DNR gave the Ombudsman for extending its investigation into October.

The DNR considers CAR's as part of a peace officer's investigative report.³⁰ The manual says all CAR's "must" be forwarded to the officer's supervisor. A covert team member

³⁰ The following statement appears at the bottom of the CAR form: "This document was produced as a result of an official Law Enforcement investigation. Contents, in whole or part, are privileged by section 22.7, Code of Iowa, and may not be used without express permission of the lawful custodian of the records or in answer to a court."

testified a copy of a CAR might go to his partner – there was no mention of sending a copy to his district supervisor. This same covert team member provided the Ombudsman with a CAR after he testified he had prepared one to document his visits to markets in eastern Iowa. This CAR was not provided by the DNR in response to the Ombudsman’s subpoena and was not in the DNR’s “centralized” investigative file.

Bureau Chief Joslin testified that district supervisors are only made aware of covert operations on a need-to-know basis in a covert operation. Supervisor Lindenberg said he had no idea where covert team members sent their CAR’s. To address this inconsistency, the Ombudsman recommends that copies of all the CARs and related documentation prepared as the result of a covert operation be forwarded to the Bureau Chief. The Ombudsman also recommends the manual be modified to require this practice.

Contrary to the following requirements set forth in the manual, Bureau Chief Joslin and Officer Lonneman confirmed the DNR failed to prepare a “Letter of Transmittal.”

A Letter of Transmittal accompanies the Investigative Report going to the prosecutor. The transmittal document serves to clearly illustrate to the prosecutor: The importance of the investigation; the charges sought; the defendants involved; the witnesses involved. The transmittal document also serves to illustrate for the prosecutor the strengths and weaknesses of the case.

The Ombudsman agrees that a completed transmittal letter serves a useful purpose and should accompany referrals by the DNR to the prosecuting attorney.

There are, according to Bureau Chief Joslin, coordination problems in the area of covert operations:

I can tell you, as chief now, I’m interested in moving beyond that trying to create a full-time coordinator, an officer position, that would coordinate that team effort, because frankly, as chief and within reorganization within our own agency, bureau chiefs now have more to do than they ever had to do. And as bureau chief I don’t do justice to coordinating that team effort. I need to find a way to create a new position and allow someone to take those reins.

While a full-time coordinator might resolve some of the aforementioned documenting and coordination problems, budget constraints likely preclude such a position from being created and filled at this time.

In summary, the Ombudsman recommends the DNR:

1. Expand the list of mandatory Case Activity Reports (CAR) in the DNR’s *Standard Operating Procedures for Investigative Reports* (manual) to include serious violations such as unlawful commercialization of wildlife.

2. Require that covert team members submit copies of all CAR's and other documentation prepared as the result of a covert investigation to the Bureau Chief.
3. Identify and clarify how the manual, and provisions within the manual, apply to covert investigations.
4. Review conservation officer's compliance with the standards set force in the manual and conduct training to correct deficiencies in identified areas.

Issue 5: Whether the DNR's cultural awareness training is adequate?

Conclusion: The DNR is cognizant of the role cultural differences play in law enforcement – the Bureau provides cultural awareness training to its new officers. The Ombudsman discovered, however, that portions of the curriculum are over ten years old and some veteran conservation officers may not have had cultural awareness training in many years.

As noted in Issue 2 of this report:

- The Bureau developed curriculum entitled "Cultural Awareness" about five years ago for the Conservation Officer Training Academy.
- Bureau Chief Joslin testified it may have been anywhere between ten and twenty years since some conservation officers received cultural awareness training.

The Ombudsman notes that while the conservation officers involved in the covert investigation may have been cognizant of the cultural issues, some of the officers have not had cultural awareness training in many years. Additionally, the documents that are part of the cultural awareness training for new officers are over ten years old. Director Vonk stated the DNR has been in contact with the Iowa Asian Alliance regarding assistance or guidance for providing training on cultural sensitivity. Internally, the DNR staff which coordinate training efforts have also been involved. Director Vonk was unable to provide any timeline in which additional training might occur, but he stated, "It's something we want to do, and we need to get it worked within our cavalry of training activities."

The Ombudsman recommends the DNR develop an action plan for updating the DNR's cultural awareness curriculum and timely provide updated training to all conservation officers.

Issue 6: Whether the DNR's education efforts sufficiently identify and explain the provisions of the law regarding unlawful commercialization of wildlife?

Conclusion: The Ombudsman finds the DNR's has taken steps to improve their education efforts regarding the unlawful commercialization of fish. The DNR has increased its outreach efforts to the Asian community and has made revisions to its fishing publication and its web site. However, the Ombudsman believes these revisions fail to emphasize the seriousness and consequences of the potential criminal penalties resulting from unlawful commercialization of fish.

Publications

The DNR produces an annual publication entitled *Iowa Hunting, Fishing and Trapping Regulations*. According to Officer Lonneman, these publications are distributed to all vendors who sell fishing licenses or are engaged in sporting good sales. He said there are over 900 vendors in the state. Bureau Chief Joslin confirmed this publication made no mention of unlawful commercialization and only contained one limited reference³¹ to illegal sale of animals. All the testimony concurred that the publication only contained a synopsis of the rules (a disclaimer in the front of the publication notes such). The DNR has no educational materials directed specifically towards businesses who, in the course of their operations, may potentially sell wildlife.

The most current issue of the DNR's publication³² now includes language informing the reader that selling or buying fish or game is illegal:

- Page 23...
Selling Fish or Game
Except as otherwise permitted,
you cannot buy or sell, dead or alive, a
bird, fish or animal or any part of
which is protected.
- Page 26...
STOP!
SELLING FISH OR
GAME IS ILLEGAL
Except as otherwise permitted, you
cannot buy or sell, dead or alive, a
bird, fish or animal, or any part of
which is protected.

In 2002, this publication also identified liquidated damages on the Law Enforcement section on page 28 of the publication. This section on liquidated damages was moved in the current publication to page 14 under General Hunting Information, even though it also addresses fish. The Ombudsman recognizes the DNR's improvements to the publication. However, these additions do not emphasize the gravity and implications of any potential criminal charges for unlawful commercialization of fish. In addition, the

³¹ This reference is in the hunting portion of the publication.

³² Available at <http://www.iowadnr.com/law/files/2003reg.pdf>. Effective through December 21, 2004.

transfer of the liquidated damages information to the hunting section is not practical for those who use the publication solely for fishing regulations and information. For these reasons, the Ombudsman recommends including the following (or similar) language in the law enforcement section - immediately following the fishing regulations - in future publications.

STOP

SELLING FISH OR GAME IS ILLEGAL

Except as otherwise permitted, you cannot buy or sell, dead or alive, a bird, fish or animal. Nor can you sell or buy any part of an animal which is protected.

If you are convicted of doing so, you shall be required to reimburse the state for the value of the animal as follows:

- \$15 – For each fish, reptile, mussel or amphibian.
- \$1000 – For each animal classified by the Natural Resource Commission as an endangered or threatened species (see page ***)

In addition, you may be **criminally prosecuted**. Buying, selling or peddling **any** fish, game, animals or birds – taken, caught or killed within the State - that were transported with the intent to sell is a serious misdemeanor and can result in criminal penalties of up to \$1500 per fish/animal.

The Ombudsman believes the current layout of the law enforcement section of the publication allows for adding this language.

Bureau Chief Joslin said consideration was also given to creating brochures targeted towards the Asian community:

We've even looked at different types of brochures in different types of languages, and I can tell you from experience in dealing with the Asian community that there are so many different dialects and so many different languages individually that you will have people from the Asian groups themselves that will say "Don't print it in anything but English, because if you print it in this or this but not this and this, you have instantly offended the other groups."

Director Vonk confirmed there were concerns about the diversity in the Asian community in terms of "language problems." He also said there was an issue of resources so he was not sure "where we're going to go" on the issue of publishing brochures in different languages.

Web Site

The DNR's web site includes a link entitled "Iowa Fishing Regulations." The following language appears immediately under the title:

Selling Game: Except as otherwise permitted, you can not buy or sell, dead or alive, a bird, **fish**, or animal, or any part of which is protected.

This is the only direct reference to unlawful commercialization of fish. This language should also be modified, similar to the Ombudsman's recommendation for the DNR's *Hunting, Fishing and Trapping Regulations* publication, to reflect the potential criminal consequences for unlawful commercialization of fish.

Outreach

In addition to making revisions to its website and publication, the DNR has initiated outreach efforts towards the Asian community in Polk County. DNR director Jeffrey Vonk said he met with members of the Asian community to address their concerns after the results of the DNR's investigation were made public. Director Vonk testified, "What I am committed to doing is, if there was a deficiency, to make sure that that doesn't continue..." Towards this end, Director Vonk appointed Bernie Hoyer to work with the Iowa Asian Alliance.

...he [Hoyer] goes to the board meetings and tries to make sure that the department is informed on activities so we can take advantage of opportunities to further educate and work with the community.

Other outreach efforts undertaken by the DNR include:

- ✓ An informational booth at the Asian Heritage Festival on May 22, 2004.
- ✓ A fishing clinic, in cooperation with a number of organizations, on June 19, 2004 at Gray's Lake.

The Ombudsman recommends the DNR continue to expand its outreach efforts to educate groups, including the Asian community, and entities, including markets and other commercial establishments, of the DNR regulations regarding the unlawful purchase and sale of fish and other wildlife.

RECOMMENDATIONS

The following recommendations are not listed in any particular order of priority. They are presented in sequential order similar to the subject matter discussed in the “Analysis and Conclusions” section of this report.

The Ombudsman recommends the DNR:

1. Explore seeking statutory authority creating administrative penalties for unlawful commercialization of wildlife, in lieu of or independent of criminal charges that may be filed for such violations. Factors to consider in the assessment of an administrative penalty may include the gravity of the violation and the degree of culpability of the violator (see section 455B.109(1) regarding administrative penalties related to environmental protection).
2. Expand the list of mandatory Case Activity Reports (CAR) in the DNR’s *Standard Operating Procedures for Investigative Reports* (manual) to include serious violations such as unlawful commercialization of wildlife.
3. Require that covert team members submit copies of all CAR’s and other documentation prepared as the result of a covert investigation to the Bureau Chief.
4. Identify and clarify how the manual, and provisions within the manual, apply to covert investigations.
5. Review conservation officer’s compliance with the standards set force in the manual and conduct training to correct deficiencies in identified areas.
6. Develop an action plan for updating the DNR’s cultural awareness curriculum and timely provide updated training to all conservation officers.
7. Revise the language in the DNR’s publications and on the DNR’s web site to emphasize the seriousness and potential consequences for unlawful commercialization of fish.
8. Continue to expand its outreach efforts to educate groups, including the Asian community, and entities, including markets and other commercial establishments, of the DNR regulations regarding the unlawful purchase and sale of fish and other wildlife.

APPENDIX A –Notice of Investigation

Telephone: (515) 281-3592
Toll Free: 1-888-426-6283
TTY: (515) 242-5065
Fax: (515) 242-6007
E-mail: ombudsman@legis.state.ia.us
Website: <http://staffweb.legis.state.ia.us/cao>

STATE OF IOWA



WILLIAM P. ANGRICK II
CITIZENS' AIDE/OMBUDSMAN

CITIZENS' AIDE/OMBUDSMAN
OLA BABCOCK MILLER BUILDING
1112 EAST GRAND AVENUE
DES MOINES, IOWA 50319

April 1, 2003

Jeffrey Vonk, Director
Iowa Department of Natural Resources
Wallace Building
Des Moines, IA 50309
LOCAL

Re: Notice of Investigation

Dear Mr. Vonk:

As you know, the Citizens' Aide/Ombudsman was asked by State Representative Ed Fallon December 17, 2002 to investigate the Department of Natural Resources' (DNR) actions in its investigation and surveillance of three Asian markets in Polk County and the subsequent criminal prosecution of the store owners and fishermen for the commercialization of fish. Since that time, we have also been contacted by other concerned individuals. My office has completed a preliminary review of DNR documentation and has conducted informal interviews with DNR staff. In accordance with Iowa Code Chapter 2C, I am now providing formal notice of my investigation and requesting additional information and interviews.

Nature of the Investigation

The complaints allege that the course of action DNR took in the investigation, surveillance and subsequent criminal prosecution was oppressive, unfair and unreasonable. The allegations include, but are not limited to, the following:

- DNR treated the Asian markets differently from other Polk County area markets.
- DNR did not make any attempts before the filing of criminal charges to educate, notify, or warn the Asian markets that their actions violated Iowa law.
- DNR prolonged the investigation unnecessarily, allowing continuing or repeat violations which factored into the excessive number of criminal charges filed.

Although my investigation may focus on these specific allegations, please be advised that the scope of my review may extend to other related issues that come to my attention.

Contacts

The Assistant Citizens' Aide/Ombudsman assigned to the investigation is Kristie Hirschman, Assistant for Small Business.

Advisory Regarding the Investigative Process

The Citizens' Aide/Ombudsman is an independent agency of the Iowa Legislature established and empowered under Iowa Code Chapter 2C. The Ombudsman may receive and investigate complaints about Iowa state and local governmental agencies. In addition to ascertaining whether an agency action or policy is in accordance with law, rule, or policy, the Ombudsman is charged with determining whether lawful policies and actions are reasonable, fair, arbitrary, capricious, or otherwise objectionable. The Ombudsman also has the responsibility to consider lawful actions and policies that appear lacking in explanation or rationale.

Under section 2C.9(3), the Ombudsman can request and receive from agencies information necessary to make a determination. This office can issue subpoenas and compel any person to appear to give sworn testimony and/or produce documentation or other evidence relevant to our investigation.

The purpose of this investigation is to impartially discover and gather the facts, and then make an objective determination regarding the concerns we identify to be at issue in this case. My staff and I will review relevant information and applicable law before reaching any conclusion. I will inform you of my findings, conclusions, and appropriate recommendations.

If I decide to publish any conclusions critical of the Department of Natural Resources, any official or individual criticized will have an opportunity to review and respond to my report. I will consider the reply and may make changes to the report, if appropriate, before it is published. Each unedited reply will be attached to the published report.

My office will maintain the confidentiality of any records that are confidential by law unless authorized to disclose or release such records. I will rely upon you to help me identify such records.

Public employees who give certain information to my office are protected from retaliation under Iowa's "whistle blower" statutes (Iowa Code 19A:19, 70A.28 and 70A.29.) Violation of one of these statutes is a simple misdemeanor.

In addition, as provided by Iowa Code section 2C.22, any person who willfully obstructs, hinders or misleads my staff or me in this investigation shall be guilty of a simple misdemeanor.

Request for Information and Interviews

At this time, I have the following requests and questions:

1. In an email dated January 15, 2003, Kristie Hirschman made the following request to Lon Lindenberg, DNR district supervisor for South Central Iowa:

Please provide a copy of Mr. Lonneman's file which I viewed last Friday, as well as any other documentation relevant to the case.

Ms. Hirschman also copied you and DNR Deputy Director, Elizabeth Christiansen on the email. It is my understanding that DNR provided only the contents of Mr. Lonneman's file.

At this point, I am requesting additional information as listed in the enclosed subpoena, excluding any records that were provided pursuant to the January 15, 2003 request.

In addition, provide a listing of records/items relevant to my investigation that are no longer in DNR's possession, custody or control. In so doing, identify or provide:

- a. Who currently has custody of these records/items.
 - b. When custody was transferred to the other party.
 - c. Why custody was transferred to the other party.
 - d. Documentation regarding the transfer of these records/items or documentation regarding the destruction of these records/items.
2. Provide a copy of DNR's policy regarding covert operations and surveillance. By district, how many covert operations were initiated by DNR since January 1, 2000?
3. Provide a copy of DNR's policy regarding enforcement of the Iowa Code sections relating to wildlife and fishing.
4. Provide a copy of DNR's policy regarding issuance of press releases.
5. Provide a copy of DNR's policy for approving the purchase and rental of equipment. Provide documentation generated for equipment expenses incidental to this investigation, including the purchase of a vest for video camera surveillance.
6. Provide documentation supporting the expenses incurred by DNR during the investigation, including those expenses reimbursed by the store owners as part of their plea agreement. Under what authority is DNR able to recoup these expenses from the store owners?

7. Provide a list of individuals, both within and outside of DNR, who took part in the investigation. Identify their employer, position, phone and work address information if available.
8. How many other cases/instances since January 1, 2000 has DNR sought criminal prosecution for violations of section of 481A.136 of the Iowa Code since? Provide details.
9. How many other cases/instances has DNR sought criminal prosecution for violations of section of 481A.136 of the Iowa Code specifically for unlawful commercialization of fish since this provision was enacted in 1992?
10. Provide a copy of DNR's 2002 *Hunting, Fishing and Trapping Regulations* publication.
11. Provide a 2002 copy of DNR's *Fish Iowa!* Brochure.
12. Provide a copy of a 2002 fishing license.
13. Provide a copy of DNR's Law Enforcement Bureau's curriculum on "Cultural Awareness" that is taught in the Conservation Officer Training Academy.
14. Provide copies of DNR's Law Enforcement Bureau's annual activity report for 2001 and 2002. (We have the 2000 report from DNR's web site.)

I am requesting a response by April 21, 2003. In addition, Ms. Hirschman will be contacting DNR staff individually to schedule dates for sworn testimony.

If you have any questions regarding this investigation or if you can not meet the aforementioned deadline, contact Ms. Hirschman at 281-4629 or myself at 281-3592. Thank you in advance for your continuing cooperation.

Sincerely,



William P. Angrick II
Citizens' Aide/Ombudsman

KH/WPA/mlb

cc: Lowell G. Joslin, Law Enforcement Bureau Chief
Lon Lindeberg, District Supervisor for South Central Iowa
Craig Lonneman, field conservation officer for Polk County
Enclosure: Subpoena

023763a/kh

APPENDIX B - Chronology

CHRONOLOGY OF DNR'S COVERT INVESTIGATION

Introduction

This chronology summarizes the events the Ombudsman believes are relevant in understanding the course, scope and length of the DNR's investigation. The sequence of events is drawn from sworn statements, documentation provided by the DNR and court records.

DNR staff testified that a covert operation may include purchases but may not always entail surveillance. For this reason, the following chronology differentiates between stopping at a market and purchasing or observing game fish and conducting surveillance.

The number of game fish³³ purchased or seized on each date are italicized for ease of identification.

Chronology

Between August 3 and August 10, 2002 –DNR County Conservation officer, Craig Lonneman, received information from a confidential informant that Ting's was selling game fish.³⁴

August 10, 2002 – Covert team member made a visit to Ting's to ascertain if game fish were being offered for sale. *Five fish purchased* from Ting's.

August 11, 2002 – *Nine fish purchased* from Ting's. The CAR also noted that other unnamed Asian markets were visited and did not have game fish for sale.

August 12, 2002 – *Four fish purchased* from Ting's.

August 17, 2002 – *Four fish purchased* from Ting's.

August 21, 2002 – *Three fish purchased* from Ting's.

August 25, 2002 to September 13 2002 – Covert team members conducted surveillance of Ting's on seven different days during this time period.

³³ As explained earlier in this report, the term "game fish" is used throughout the Ombudsman's report to identify fish that were not bought from a wholesale source.

³⁴ Officer Lonneman testified that he had received general information prior to August of 2002 that fish were being sold but it was not until this period of time that Ting's was specifically identified.

August 25, 2002 – Covert team observed what they believed to be a delivery of game fish to the north door of Ting’s. (The seller was identified and the vehicle followed back to the registered owner’s address.) At least three different covert team members observed game fish for sale at Ting’s.

August 26, 2002 – Covert team observed a red cooler being delivered to the back door of Ting’s. (The seller/driver of vehicle was identified and the vehicle followed back to the registered owner’s address.)
*Ninety-six fish purchased from Ting’s.*³⁵

August 29, 2002 – Covert team observed two buckets of game fish being delivered to the front counter of Ting’s. (Owner of vehicle identified.) *Three fish purchased.*

September 6, 2002 – Covert team observed a blue and white cooler being carried into the north door of Ting’s. (Driver and passenger were identified.) *Seven fish purchased from Ting’s.* Surveillance of fisherman’s home also took place this date.

September 9, 2002 – Visit and surveillance at Ting’s identified game fish for sale but no purchases were made.

September 11, 2002 – Covert team set up a camper to use as surveillance of Ting’s. (Had been using a van.) *Fourteen fish purchased from Ting’s.*

September 12, 2002 – Covert team followed a vehicle from Ting’s to the Des Moines River, below Red Rock Reservoir. Drivers and passengers identified. Covert team observed three individuals fishing. A covert team member caught and fin clipped³⁶ twelve crappies and one white bass and gave those fish to the individuals who were fishing. (Covert team followed the vehicle back to address of one of the vehicle occupants.)

September 13, 2002 – Covert team followed the vehicle (identified in the September 12 surveillance) to Ting’s. Covert team observed the blue and white cooler (identified September 12) being delivered to the north door at Ting’s. Covert team successfully purchased six fin-clipped crappies from the previous day’s exchange a short time later. *Eight fish purchased from Ting’s.* Separate surveillance conducted of Ting’s by other covert team members in a parked van.

³⁵ Covert team member testified that he bought a large number of fish on this one occasion to see how quickly the store could replenish its stock.

³⁶ Fin-clipping - the pectoral fin was removed from these fish in an effort to positively identify these as the same fish being sold to Ting’s.

September 6, 2002 – *Three fish purchased* from Des Moines Asian.

September 9, 2002 – Visit to Des Moines Asian and a local ethnic market did not identify any game fish for sale in the market.

September 12, 2002 – *One fish purchased* from Des Moines Asian.

September 18, 2002 – *Six fish purchased* from Jung's.

September 18, 2002 – Covert team member visited a market identified as an Asian market in Davenport. No game fish were observed.

September 19, 2002 - *Two dressed catfish purchased* a local ethnic market.

September 19 (20), 2002 – *Skinned (dressed) catfish and catfish fillets purchased* at a local ethnic market.

September 20, 2002 – *Five fish purchased* from Ting's.

September 21, 2002 – *Two fish purchased* from Jung's.

September 21, 2002 – Visit to Ting's identified game fish for sale. No purchase made.

September 21, 2002 – Visit to Des Moines Asian did not identify any game fish for sale in the market.

September 21, 2002 – Visit to a local ethnic market identified two fully dressed catfish. No purchase made.

September 23, 2002 – Visit to Jung's Asian Market did not identify any game fish for sale in the market.

September 23, 2002 – Visit to a local ethnic market did not identify any game fish for sale in the market but the clerk directed the covert team member to an ethnic restaurant.

September 23, 2002 – Visit to a local ethnic market did not identify any game fish for sale in the market.

September 23, 2003 – Visit to Des Moines Asian identified four cleaned catfish wrapped in clear plastic wrap. No purchase made.

September 23, 2003 – Visit to Ting's identified tubs of fish. No purchase made.

September 24, 2002 – *Fifteen fish purchased* from Ting's.

September 25, 2002 – *Five fish purchased* from Ting's.

September 25, 2002 – Visit to Jung’s did not identify any game fish in the market.

September 25, 2002 – Visit to a local ethnic market did not identify any game fish in the market.

September 25, 2002 - *One dressed catfish purchased* from Des Moines Asian.

September 25, 2002 - *One dressed catfish purchased* from the local ethnic market.

September 26, 2002 – *Five fish purchased* from Ting’s.

September 30, 2002 – *Six fish purchased* from Ting’s.

October 1, 2002 (estimate, exact date unknown) – Officer Lonneman shared the information gathered to date with the County Attorney’s office, discussed whether the elements for unlawful commercialization were met and discussed applying for a search warrant.

October 2, 2002 – Visit to Des Moines Asian did not identify any game fish in the market.

October 2, 2002 – Visit to Ting’s identified game fish but no purchases were made.

October 2, 2002 – Visit to Jung’s Asian Market did not identify any game fish in the market.

October 2, 2002 – Visit to a local ethnic market identified two dressed catfish. No purchases were made.

October 3, 2002 – Covert team member visited 7 major supermarkets in Polk County, (three different franchises) and did not observe any game fish offered for sale.

October 4, 2002 – *Four fish purchased* from Ting’s. This transaction was videotaped.

October 4, 2002 – Covert team member visited markets identified as Asian markets in both Cedar Rapids and Iowa City. No game fish were observed.

October 12, 2002 – *Five fish purchased* from Ting’s.

October 12, 2002 – Visit to Des Moines Asian did not identify any fresh or frozen fish in the market.

October 12, 2002 – Visit to Jung’s did not identify any fresh or frozen fish in the market.

October 12, 2002 – Visit to a local ethnic market identified 1 ½ fresh catfish³⁷ in the meat department. No purchases were made.

October 12, 2002 – Visit to a local ethnic market did not identify any fresh or frozen fish in the market.

October 12, 2002 – Visit to a local ethnic market did not identify any fresh or frozen fish in the market.

October 15, 2002 – *Fourteen fish purchased* from Ting's. This transaction was covertly videotaped.

October 18, 2002 – The search warrant was signed by a district court judge.

October 21, 2002 – DNR conservation officers, covert team members and officers from the Des Moines Police Department served a search warrant at Ting's. The following fish were seized from the cooler area: *115 crappies, 19 white bass, 2 flathead catfish and 1 bluegill (total of 137).*³⁸

October 21, 2002 – A consent search was conducted by some of the aforementioned officers of Des Moines Asian. No game fish were observed.³⁹

October 21, 2002 – A consent search was conducted by some of the aforementioned officers of Jung's Asian Market. *Twelve fish seized.*⁴⁰

³⁷ CAR indicated the catfish appeared to be larger than catfish available from catfish farms.

³⁸ A total of 348 fish were purchased and/or seized from Ting's over the course of the DNR's investigation.

³⁹ A total of 5 fish were purchased and/or seized from Des Moines Asian over the course of the DNR's investigation.

⁴⁰ A total of 20 fish were purchased and/or seized from Jung's over the course of the DNR's investigation.

APPENDIX C – Cultural Awareness Curriculum

FOUR PART GUIDE ON REFUGEE ISSUES:

PART I REFUGEE MYTHS AND FACTS

PART II AN ASIAN VIEW OF HUNTING AND FISHING IN IOWA

PART III ASIAN ATTITUDES TOWARDS AUTHORITY

PART IV EFFECTIVE COMMUNICATION: PROVIDING SERVICES WITH AN INTERPRETER



Written by: Dena M. Gray Raske

Bureau of Refugee Services
1200 University Avenue, Suite D
Des Moines, Iowa 50314

December 1990

PART I - REFUGEE FACTS AND MYTHS

"...REFUGEES ARE A RESOURCE FOR THE FUTURE - NOT A BURDEN OF THE PRESENT, WITHOUT ANY FUTURE."

REFUGEES, WHO ARE THEY?

The term "refugee" means an alien who is unable or unwilling to return to his/her country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.

MYTH 1

Refugees Come Here for Economic Reasons:

FACT: Refugees are individuals or families who come here because they had to flee their homeland, many times with little or no belongings, leaving family and friends behind because they are unable to return. Most refugees would rather live and work in their native country.

MYTH 2

The United States Is The Only Country To Take Refugees.

FACT: There are 24 countries worldwide involved in refugee resettlement. The major resettlement countries include: Australia, Canada, China, France, Germany, United Kingdom, and the United States.

MYTH 3

Refugees Receive Special Money From The U.S. Government To Purchase Homes, Cars and Other

FACT: The U.S. government does not provide refugees with money when they arrive in the U.S., however, there are minimal benefits available for emergency situations and the medically needy. The refugee must apply for these benefits and meet income and resource standards to qualify for any assistance.

MYTH 4

Refugees Do Not Pay Taxes.

FACT: Refugees are subject to the same employment, property, sales, and other taxes as any citizen living in the United States.

MYTH 5

Refugees Take Jobs From U.S. Workers.

FACT: Recent evidence by the U.S. Labor Department says "No" to the myth. Refugees are not provided any special treatment when obtaining employment. They must apply and compete for jobs the same as any citizen. Refugees and immigrants often create jobs for U.S. workers because they have a high propensity to start new businesses. Refugees have been a major force in contributing to the urban renewal of major U.S. cities.

PART II - ASIAN VIEW OF HUNTING AND FISHING

GENERAL INFORMATION

How Southeast Asians feel about wildlife and hunting is very important. Their feelings and beliefs may affect future laws about hunting and land use.

- * Most Asians do not kill animals for recreation.
- * Most Asians disapprove of irresponsible acts of hunters such as unsafe use of firearms, not knowing hunting laws, poachers, and not respecting others.
- * Why do Asians hunt and fish? Asians hunt as a traditional means of support for their family and as a way to supplement their diet. Hunting and fishing are also ways to maintain the vital link between their culture and native countries.
- * Most Asians are familiar with basic wildlife management concepts and Iowa's hunting and fishing laws and regulations. Much of their knowledge has been gained by attending Hunter Education Classes.

New arrivals, on the other hand, may be less familiar with the procedures, but are likely to ask advice from other Asians who have been in the U.S. for a longer period of time. (To identify a newcomer, check the date of their arrival on

their I-94 form.)

- * Most Asians will hunt in a public access area because they are reluctant to ask a private landowner for permission. Lack of proficient English skills makes them afraid to approach the landowner.
- * Knowing the laws is not always enough. Because hunting is a matter of basic survival for many Asian families, regulations which limit the bag or catch are often ignored. Due to the seasonal weather changes in Iowa, which is not a factor in Southeast Asia, hunters and fisherman must hunt or fish for enough food to last all during the off-seasons.
- * Asians are offended by the wasteful behavior of Americans who kill simply for sport and leave the catch (like unpopular rough fish) on the shorelines to decay and create a stink or those who hunt animals (like raccoon and beaver) just for the fur and then leave the meat behind to rot.

GAME COMMONLY HUNTED OR FISHED FOR IN IOWA BY SOUTHEAST ASIANS

LARGE MAMMALS (Deer)



WEAPONS AND DRESSING GEAR

BACKPACK

Carried in the backpack are such survival items as food and water (2-3 glasses carried in a plastic jug) which can be used just in case they were to become lost in the woods. These are basic survival items of Southeast Asians who have endured many hardships in their lives.

GUNS

Guns used are standard registered hunting weapons. (Commonly the 12 or 20 gauge shotgun and the 22 rifle)

KNIVES

Long bladed knives (12-14" handle/blade combination) are carried for cleaning and cutting the game. The knives are also used for scraping or scratching which is a part of the "blackening" process. It is believed that a small bladed knife, such as a pocket or normal sized hunting knife, is inefficient and impractical for the job the knife is expected to accomplish.

MACHETES

Military type machetes are included as a part of the standard survival

equipment used when hunting in the dense forests and jungles of Southeast Asia. The machetes were used to cut away at the dense foliage; for protection from reptiles and wild animals; for cutting wood used for cooking game in the field; for cutting through large animal bones which would make the game easier to lift and carry back to the village; and used for marking the trail to avoid getting lost.

The machetes would normally be carried in the backpack or near the side through a belt. Most of the more "Americanized" refugees do not carry a machete, but some new arrivals are still in the survival mode of operation and may be found carrying them.

FIELD DRESSING

SMALL GAME (Especially squirrels)

1) Build a small fire for "blackening" the game. "Blackening" is a term used for burning the fur on the animal until it is black in color.

2) Skewer a green stick through the animal carcass (do not remove guts prior to burning).

3) Place the stick between two other forked sticks over the fire.

4) After the fur has been entirely "blackened", remove animal from fire. (Animal is not being cooked for eating.)

5) Cut through the skin and pelvic bone at the

In Southeast Asia there was no method of preservation such as refrigeration or freezing, so the animal would be preserved with salt and garlic and then dried.

Southeast Asians seldom make sausage from deer meat, which is a fairly common American practice. Sausage is rarely made from "white meat" animals.



FISH (Carp, Catfish common to Iowa rivers)

1) To store the fish until going home to clean, they are stored either in a bucket of water or in an ice cooler. It is important that the fish remain fresh, it is difficult to clean a fish that is too dry.

Somewhat unique to the Southeast Asians, and more common practice of professional American anglers, Asians fish for a single species of fish when they are fishing. They will select a bait that will only attract that specific type of fish, which is unlike many recreational fishermen and women who will use a worm for bait which is likely to attract several different species.

Bait used for catching catfish is shad, chicken

liver or turkey liver. The sure bait for carp is a mix of cornmeal, strawberries and a little sugar heated up and rolled in a ball. Bait also used for carp is sweetcorn.

Again, the Southeast Asians are strongly opposed to waste and disrespect for the environment. Asians consider Americans wasteful when they catch an undesirable fish species or size and then toss it aside to rot and decay on the shoreline.

Fish are a main food stuff and source of protein for Southeast Asian diets. In Southeast Asia, commercial fishing and family fishing operations are performed with nets. Men may also use a fishing pole (bamboo or stick), if they are fishing strictly for their individual families need. A newcomer might be unaware that there are restrictions on this method of fishing. Generally, the "throwing of the net" is method used for catching bait like minnows, shad or shiners.

PART III - ATTITUDES TOWARDS POLICE AND AUTHORITY FIGURES



Recognizing that Southeast Asian refugees have preconceived notions and attitudes about police and other authority figures is important when attempting to approach, communicate with or develop trust with a refugee. These notions, some of which are listed below, have been instilled in the minds of refugees as a direct result of years of threats, persecution, and wars in their native countries.

- Police are an extension of the military or a militant organization
- Police suppress freedom rather than protect freedoms
- Police are to be feared because...
 - .. they threaten to physically punish or abuse
 - .. there is no due process, you will simply be thrown in jail or sent to a re-education camp
 - .. they are not to be trusted
 - .. they may label me or my family trouble makers
- Police should be used only as a last resort in solving problems (most problems are handled by the head-of-household or the community elders)
- A criminal, or someone accused of a crime, in the family will cause the family to loose face
- America's bail system is a form of "bribery", if you have enough money to pay the police you can get out of jail

In America refugees will respond to authority figures in a variety of ways and it is impossible to predict any sort of typical response, but there are some generalities among the group.

- 1) Elders and older adults are more likely to demonstrate respect and deference to authority, while the youth, on the other hand, are more like American teenagers, more defiant and less respectful.
- 2) Most refugees are reluctant to report crimes even if they are the victim.
- 3) To avoid causing a confrontation they will not contradict or argue in public, especially with a boss, authority figure, or anyone of equal or greater status.
- 4) Southeast Asians will speak through a middle person or neutral party to solve conflicts and will rarely speak directly to the person with whom they are dissatisfied.

- * Smiling or laughing by the refugee at what seems an inappropriate time may indicate that they don't really understand what is being said or are attempting to relieve stress caused by the situation.
 - * Generally, little physical contact is made in public between the sexes, limit physical contact such as touching between you and the opposite sex.
 - * It is not uncommon for those of the same sex to hang on to each other's hands which is a sign of friendship.
- Try not to ask yes and no questions, because yes often means maybe or no, and frequently means that they really don't understand the question. Ask questions in a way that the refugee can repeat back information so that you know the question was understood.
- Refugees frequently understand much less English than we may assume.

**PART IV - EFFECTIVE
COMMUNICATION:
PROVIDING SERVICES WITH AN
INTERPRETER**



Service providers, whether they are in the medical, social service, law enforcement, or judicial systems, cannot provide effective service for people with whom they cannot communicate.

Non-English speaking persons need and have the right to access professional interpreters. Chapter 622A of the Code of Iowa specifically states that "every person who cannot speak or understand the English language and who is a part to any legal proceeding or a witness therein, shall be entitled to an interpreter to assist such person throughout the proceeding".

Without utilizing interpreters, many people go unserved or are inadequately served. In addition, valuable time, money, energy and expertise are wasted.

For service providers, delivering services through an interpreter is a difficult, but not an impossible task. The key to success is to think of working with an interpreter as a different version of the work you do with English-speaking persons, rather than as only a more arduous and time consuming one.

Advance Notice:

The Bureau prefers that all non-emergency related requests for translators be made 48 hours in advance of the need for such services.

Phone Consultation:

In some instances, three way hook-ups or conference calls may eliminate the need for an on the spot interpreter.

Office Locations:

The Bureau has offices located in Des Moines, Sioux City, Davenport and Cedar Rapids. The request for services must be directed to the main office in Des Moines. Written requests should be forwarded to:

Wayne Johnson, Bureau Chief
Iowa Department of Human Services
Bureau of Refugee Services
1200 University Avenue, Suite D
Des Moines, IA 50314

The Bureau chief, or his designee, is responsible for matching and assigning an interpreter with each request. The assignment is based on an initial assessment of the responses received to the questions below. For more complex cases, additional guidelines may apply.

* *Client's and the Interpreter's Background.*

A good match between the client, interpreter and service provider is very important. The issues to be considered include -

Gender: In sex abuse cases, for example, female clients usually prefer a female interpreter and a female service provider.

Age: Clients are likely to be most comfortable with an interpreter who is close to their own age or older.

Social/ethnic issues: There are frequently tensions between people from the same country or culture. A farmer from a northern region may not feel comfortable with a businessman from a southern region.

Politics/religion/beliefs: On occasion there may be conflicting political, religious or other moral beliefs which may create some underlying tensions.

Dialects: There are times when interpreters will be unable to work effectively with a fellow countryman because they are unfamiliar with the particular dialect that is spoken.

Family ties: A client may hesitate to speak openly if the interpreter knows his family. The Bureau will not assign an interpreter to a legal related case, if that person is a immediate family member.

If an interpreter assigned to a particular case discovers that they are not the most appropriate interpreter or that there may be a conflict of interest, a reassignment will be made. Often times two or three interpreters may be involved in one case, such as in a court related action.

- * **Clarification.** If the interpreter cannot easily interpret something the service provider or client says, the interpreter should feel free to ask for clarification and explain the problem to the service provider. If the service provider feels the interpreter is talking too long, they should feel free to ask the interpreter what they just said.
- * **Avoid Long discussions.** Long discussions should be avoided between the service provider and the interpreter during the session because they can make the client feel left out.
- * **Discuss technical terms.** Discuss any technical terms that the service provider will use during the session, for example medical terms or legal terms, should be discussed and defined prior to the actual session.
- * **Sensitive Topics.** Discuss whether the client and/or interpreter are likely to feel uncomfortable if certain matters (such as sex, religion, politics and personal finances) are discussed.
- * **Introductions.** The interpreter and the service provider should discuss how they will introduce themselves to the client. Who will speak to the client first? Will the service provider want the interpreter to meet with the client for a couple of minutes without the service provider?
- * **Feedback.** Should the interpreter give the service provider feedback during the session or after the session about what the interpreter observes about the client and the service provider? Topics for feedback include:
 - 1) **Non-verbal cues** - For example, a certain way of sitting might be insulting in the client's culture.
 - 2) **Speech pattern or tone** - For example, the interpreter could tell the service provider that the client's way of speaking suggests that the client is sad.
 - 3) **Cultural information** - For example, an interpreter might explain, "The spirit the client is talking about is the god of death in our culture."

STEP FIVE: AGENCY FOLLOW-UP

If the original responses to questions asked in Step One have changed significantly or scheduled arrangements need to be modified, contact the Bureau Chief at the main office to address those changes.

Only the Bureau Chief or his designee may authorize reassignments, additional session time, or other such changes.

ADVANTAGES OF USING A TRAINED INTERPRETER

- 1) Two minds can be better than one.
- 2) A client will feel more comfortable in the presence of a third person.
- 3) The service provider can use the interpretation time to think and plan.
- 4) The presence of the interpreter provides a check on the service provider's usual assumption that his words will be understood and his cultural values will be shared by the client.
- 5) Working with a client from another country gives the service provider a chance to learn about and relate to people from other cultures.
- 6) Sensitivities gained in working with an interpreter will improve a service provider's skills in working with Non-English speaking clients.

DNR

THE PROBLEM OF CROSS-CULTURAL CONFLICT
IN CONSERVATION ETHICS

A White Paper by

David C. Fulton

and

Jonathan G. Taylor

February 24, 1992

ABSTRACT

Recent immigrants from Laos, belonging to the Hmong culture, have violated wildlife protection laws by poaching game and non-game animals. Poaching has occurred wherever the Hmong have settled in the United States and appears to be a phenomenon related to the conservation ethics of that culture. Wildlife officials have a difficult time addressing poaching that is culturally motivated. A human dimensions study is proposed using methods drawn from cultural anthropology to identify the cultural causes of poaching. The final step, in the proposed research, would be to translate the cultural information into an effective strategy for resolving this management dilemma.

The Problem of Cross-Cultural Conflict
in Conservation Ethics
A White Paper by
David C. Fulton and Jonathan G. Taylor

PURPOSE

The purpose of this paper is to identify a fish and wildlife management dilemma associated with the changing ethnic mix in the U.S. population and to propose a course of action for addressing this problem: the case of Hmong refugees from Laos poaching non-game species of birds. The U.S. Fish and Wildlife Service's Vision for the Future (USFWS, 1991) recognizes that effective management of wildlife and fish resources requires careful consideration of changes in the ethnic mix of the U.S. population. Attendant with these changes are new resource use interests and differing conservation ethics. What these changes in ethnic mix mean for fish and wildlife managers can be surprising and presents managers with perplexing problems.

NEED

Individuals who have recently immigrated to the United States may value fish and wildlife resources for reasons that are surprisingly different from those of the dominant American society. Species that have been traditionally valued for reasons of aesthetics or biological diversity may be prized as sources of food or income by these new Americans. While most Americans cannot condone hunting redwing blackbirds for food or trapping goldfinches to sell as pets, some Hmong refugees from Laos are engaged in these and similar activities to a degree that has caused concern among wildlife managers and law enforcement officials.

The popular press recognizes that poaching violations have been a problem wherever the Hmong have settled in the U.S. (Shermer, 1988). Administrators from FWS Region 3 report that individual Hmong have violated wildlife protection laws on the National Wildlife Refuges in that region. Because it is located near the urban center of Minneapolis-St. Paul, where a large Hmong community has settled, the Sherburne Refuge has been the principal target of these activities (Hood, 1991). The violations have primarily involved the taking of non-game, migratory birds on the refuges for food.

Widespread poaching by members of the Hmong community produces a management dilemma for refuge managers and law enforcement personnel. Hmong poaching activities conflict with refuge management goals (Reed and Drabell, 1984:17). The taking of songbirds is a situation that refuge managers can neither allow nor ignore. These birds are protected by The Migratory Bird Treaty Act. Unfortunately, effective enforcement has been hampered in two ways: first by a language barrier, but more importantly by a barrier in cultural understanding. If managers are to be successful in addressing the widespread poaching activities of the Hmong, or other ethnic groups, they must understand what differences in conservation ethics exist, and the influences of culture and ethnicity that underlie these differences.

Ewert and Pfister (1991) identify management problems such as this one as dilemmas of cross-cultural conservation ethics. They (1991:146) report:

The type and quality of [conservation ethics] held by the public have tremendous impacts upon the success of any number of wildlife and other natural resource programs (i.e., the presence or absence of poaching). Compounding the complexity of the issue is the profound influence that culture and ethnicity can play on the belief system and behaviors of the visiting public.

To understand differences in conservation ethics will require a close scrutiny of both Hmong individuals and the larger communities and culture to which they belong (Ewert and Pfister, 1991). There are many cultural and ethnic factors that can influence the development of a conservation ethic including religion, sense of place, social status, group norms, economic background, perceptions of ownership, and individual achievement orientations (Simcox and Pfister, 1989).

A significant amount of research has been done on Hmong culture in their homelands (Geddes, 1976; Cooper, 1984; Tapp, 1989), and some research has addressed the problems the Hmong face in immigrating to the United States (Dunnigan, 1982; Fass, 1986; Hendricks et al., 1986). However, no research has focused on the attributes or development of Hmong conservation ethics. No formal knowledge exists on the value systems of the Hmong relative to the natural environment, including fish and wildlife utilization, on an individual or collective level. Moreover, no clear strategy exists for approaching the Hmong community concerning wildlife violations by Hmong individuals. Before managers can effectively address the Hmong poaching activities, research must be conducted concerning Hmong conservation ethics and the relationship of cultural factors to conservation ethics.

PROPOSED RESEARCH PLAN

Service social scientists propose a study that recognizes the "wildlife/environment/people triad" suggested by Decker et al. (1991) as the context of wildlife management. Our proposal would seek to synthesize and apply social science, specifically human dimensions knowledge, to the management of the affected wildlife resources (Decker et al., 1989). Although wildlife management decisions are made within boundaries that generally are defined by the biological capabilities of the species, community, or ecosystem; there usually is a wide range of choices that are biologically supportable. A social decision must identify which biological option is the socially preferred resource management strategy.

Human dimensions research has explored the broad spectrum of contemporary values and ethics held by mainstream Americans towards wildlife (Kellert, 1980). The ways in which people value wildlife vary greatly, even within otherwise homogeneous populations. This diversity, of values and what is held to be ethical human behavior towards wildlife, becomes greatly exaggerated when comparing such distinctly different cultural groups as the dominant American society and Laotian refugees.

Insight into managing natural resources, such that diverse public groups can use and appreciate them, can be gained from the discipline of outdoor recreation research. Driver and Brown (1978) offer an excellent organizing device for distinguishing among different types of outdoor environments and the attendant expectations and satisfactions of user groups: the Recreation Opportunity Spectrum [ROS]. One critical element of the ROS is the inclusion of management as part of the experience of the user. These, and subsequent authors (Manning, 1985; Driver et al. 1987) define three essential elements of "environment" for the user: The Physical Environment (in the fish and wildlife context this means plants, animals and their habitats); the Social Environment (the numbers and types of people encountered in the environmental experience); and the Management Environment (the rules, restrictions, and physical elements such as signs and structures) erected by managers to govern the resource.

The proposed study of Hmong wildlife use would build on this existing framework with the ultimate goal being to identify management strategies for successfully addressing the poaching activities of Hmong individuals. The study would address several research questions to work toward this goal. These include: 1) what cultural factors influence the development of conservation values and ethics among Hmong individuals; 2) what are the

conservation values and ethics of the Hmong; 3) how do the conservation values and ethics of the Hmong influence their interaction with the natural environment, including wildlife resources; 4) what community leadership and communication patterns are important to Hmong culture.

The initial step of the study would be to identify, to a greater degree, the actual difficulties experienced between Hmong people and wildlife officials, and to document the conflicts both qualitatively (what violations are occurring) and quantitatively (frequency and severity). Next, the culture of the Hmong in the Minneapolis-St. Paul area would be studied. The discipline of anthropology has developed research strategies appropriate to investigating the cultural factors of interest in the study (Ellen, 1984; Russell, 1988). The study will use these methods to focus an investigation on values and ethics specific to the context of the wildlife resource management impasse at hand. The study would delve into:

- the expectations and satisfactions the Hmong derive from wildlife;
- the set of conservation ethics held by this Hmong population, as they relate to wildlife;
- the influence of religion, sense of place, social status, group normative behavior, perception of ownership, and achievement orientation on the conservation ethics of the Hmong;
- communication channels and leadership/influence patterns operative within the Hmong subculture;
- recognized motivational drives.

Upon completing a cultural analysis of the Hmong in the Minneapolis-St. Paul area, researchers would have the information necessary to provide wildlife officials in the Region with directions for resolving management problems associated with this group. This information would include the influence of Hmong culture on their members in committing wildlife violations, and the cultural information about the Hmong population in the Minneapolis-St. Paul area necessary for addressing the Hmong as a community to encourage their participation in wildlife resource conservation and protection.

Time-Frame and Cost

A study such as the Hmong research proposed would take approximately 1.5 years to complete and would require about 1.25 FTE, spread among two Service researchers and an outside expert in the focus cultural group. Aside from salaries and consultant fees, costs would include travel for several trips to the culture group and the resource area affected, plus research support. The management problem involving poaching of songbirds by the Hmong is only

one example of the problems fish and wildlife managers must resolve as the ethnic mix in the U.S. population continues to change. Other resource management agencies report confronting similar problems in managing resource use by a variety of subcultures. For example, U.S. Forest Service personnel report problems with high alpine aquatic plants being gathered for medicinal purposes by Asian immigrants. The Forest Service research station at Riverside is engaged in a major program of study of resource use and desires by Latin American populations. These issues can only be expected to grow as the ethnic mix of the U.S. population continues to expand.

REFERENCES CITED

- Cooper, R. 1984. *Resource Scarcity and the Hmong Response: Patterns of Settlement and Economy in Transition*. Singapore: Singapore University Press.
- Decker, D.J., T.L. Brown, and G.F. Mattfeld. 1989. The future of human dimensions of wildlife management can we fulfill the promise? *Trans. 54th N.A. Wildl. & Nat. Res. Conf.* pp. 415-425.
- Decker, D. J., R.E. Shanks, L.A. Nielsen, and G.R. Parsons. 1991. Ethical and Scientific Judgements in Management: Beware of Blurred Distinctions. *Wildl. Soc. Bull.* 19:523-527.
- Driver, B.L. and Perry J. Brown. 1978. The Opportunity Spectrum Concept and Behavioral Information in Outdoor Recreation Resource Supply Inventories: A Rationale. pp. 24-31 in G. H. Lund et al, *tech. coord. Integrated Inventories of Renewable Natural Resources: Proceedings of the Workshop*, Tucson, AZ. Jan. 1978. Gen Tech Rep RM-55, USDA For Svc. Ft. Collins.CO.
- Driver, B.L., Perry J. Brown, George H. Stankey, and Timothy G. Gregoire. 1987. The ROS Planning System: Evolution, Basic Concepts, and Research Needed. *Leisure Sciences* 9:201-212.
- Dunnigan, T. 1982. Segmentary kinship in an urban society: The Hmong of St. Paul-Minneapolis. *Anthropological Quarterly*, 55(3): 126-134.
- Ellen, R.F. 1984. *Ethnographic research: a guide to general conduct*. London: Academic Press.
- Ewert, A., and Pfister, R. 1991. Cross-cultural land ethics: motivators, appealing attributes and problems. *Transactions of the North American Wildlife and Natural Resources Conference*, 56:146-151.
- Fass, S. 1986. Innovations in the struggle for self-reliance: the Hmong experience in the United States. *International Migration Review*, 20(2):351-380.
- Geddes, W. 1976. *Migrants of the Mountain: The Cultural Ecology of the Blue Miao (Hmong)*. Oxford:Clarendon.
- Hendricks, G., Downing, B., and Deinard, A. (Eds.) 1986. *The Hmong in Transition*. New York: Center for Migration Studies.
- Hood, L. 1991. Personal Communication August 8, 1991. Director of Law Enforcement Region 3, United States Fish and Wildlife Service.
- Kellert, S.R. 1980. Contemporary values of wildlife in American society. pp. 31-60 in W.W. Shaw & E.H. Zube (eds.) *Wildlife Values*. Ctr. for Assessment of Non-commodity Nat. Res. Values., Inst. Ser. Rep. No. 1, Univ. of AZ, Tucson.
- Manning, Robert E. 1985. Diversity in a Democracy: Expanding the Recreation Opportunity Spectrum. *Leisure Sciences* 7(4):377-399.
- Reed, N.P. and D. Drabelle. 1984. *The United States Fish and Wildlife Service*. Boulder, CO: Westview Press.

Russell, B.H. 1988. *Research methods in cultural anthropology*. Newbury Park, CA: Sage.

Shermer, S. 1988. The Hmong in America. *National Geographic*. 174(4):586-610.

Simcox, D. and Pfister, R. 1990. Hispanic values and behaviors related to outdoor recreation and the forest environment: The Angeles National Forest. Technical Research Report for USDA Forest Service, Wildland Recreation and Urban Culture Project, Riverside, CA. 140 pp.

Tapp, N. 1989. *Sovereignty and Rebellion: The White Hmong in Northern Thailand*. New York: Oxford University Press.

U.S. Fish and Wildlife Service. 1991. *Vision for the Future*.

APPENDIX D – Response to Report by Lowell Joslin



THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

STATE OF IOWA

DEPARTMENT OF NATURAL RESOURCES
JEFFREY R. VONK, DIRECTOR

August 23, 2004

William P. Angrick II
Citizen's Aide/Ombudsman
Ola Babcock Miller Building
1112 East Grand Avenue
Des Moines, Iowa 50319

Dear Mr. Angrick II:

This letter serves as our department's response to your Investigative Report 04-01, Case File 02-3763 relating to an investigation of Asian Markets in Polk County by the Department of Natural Resources. I want to thank you for this opportunity to respond to your report.

We are pleased with your conclusion that our decision to initiate a covert operation, the scope of the covert operation, and our role in charging and prosecution were fair and reasonable, based on the information available to us at the time.

I would like to address the following deficiencies that were set forth in your report:

1. DNR staff did not always adhere to the documenting provisions as set forth in the DNR's *Standard Operating Procedures for Investigative Reports* (manual).

Response: Covert investigators have already been given a directive to utilize the same report writing methods and forms for our covert unit reports as all other reports written by members of our Law Enforcement Bureau.

2. Some of the DNR's veteran covert team members and conservation officers have not received cultural awareness training for many years.

Response: Our cultural awareness training materials will be updated. Director Jeff Vonk understands how important cultural awareness training is and as such will pass this type of training on to all members of our department, not just concentrate efforts within our Law Enforcement Bureau.

3. The documents that are part of the DNR's cultural awareness training for new officers are over ten years old.

Response: As stated above we will be updating our cultural awareness training materials. Currently new officers receive cultural awareness training when entering the bureau as new employees. Our bureau will work to provide more updated training to all bureau members.

4. The revised language on the DNR's web site and in the DNR's publications do not identify the consequences of unlawful commercialization.

WALLACE STATE OFFICE BUILDING / 502 EAST 9th STREET / DES MOINES, IOWA 50319
515-281-5918 TDD 515-242-5967 FAX 515-281-6794 www.iowadnr.com

Response: These changes have been passed along to the proper persons for making such changes in both the web site and the publications.

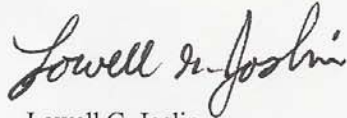
We have reviewed your list of recommendations and will consider them.

In addition to the above mentioned changes I would like to point out our outreach attempts at improving our relationship with such groups as the Iowa Asian Alliance. Our agency is a member of that group and Bernie Hoyer is our department's representative with this organization. Last year department representatives, including myself, participated in an Asian Career Day at a local Des Moines high school. We participated in this year's Asian Heritage Festival and helped to organize a summer fishing clinic with members of the Asian Alliance. We gain an appreciation of other cultures from our participation in these kinds of activities and we continue to explore ways to better understand ethnic minority groups.

In reviewing your draft report one small error was found regarding statements made in paragraph four on page ten which stated "The owners of Ting's were interviewed by Officer Lonneman and a covert team member during the execution of the search warrant. Other DNR staff searched the store and seized 137 game fish..." Officer Craig Lonneman advised that it was not a member of our covert team that interviewed the owners of Ting's it was another Conservation Officer Craig Roberg that helped with that interview.

Thank you for the opportunity to respond.

Sincerely,

A handwritten signature in cursive script that reads "Lowell G. Joslin".

Lowell G. Joslin
Chief
Law Enforcement Bureau